

***United States Court of Appeals
for the Second Circuit***



APPENDIX

ORIGINAL

75-7443

United States Court of Appeals

For the Second Circuit

BARBARA GIRARD,

Plaintiff-Appellant,

against

94TH STREET AND FIFTH AVENUE CORPORATION,
LAWRENCE WILKINSON, JOHN H. STOOKEY
and THOMAS E. MURRAY,

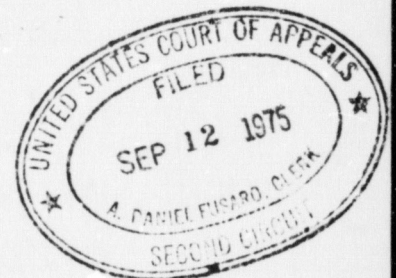
Defendants-Appellees.

APPENDIX

O. JOHN ROGGE
777 Third Avenue
New York, New York 10017
(212) 421-6400

BALLON, STOLL & ITZLER
1180 Avenue of the Americas
New York, New York 10036
(212) 575-7900

Attorneys for Plaintiff-Appellant



PAGINATION AS IN ORIGINAL COPY

TABLE OF CONTENTS

	PAGE
Docket Entries	1A
Notice of Appeal to the United States Court of Appeals	2A
Complaint	3A
Exhibit A—Proprietary Lease	12A
Exhibit B—Agreement	34A
Exhibit C—Judgment of Divorce	52A
Notice of Motion to Dismiss Complaint	56A
Statement Pursuant to General Rule 9(g)	57A
Affidavit of Martin I. Shelton in Support of Motion	59A
Exhibit A—Summons	61A
Complaint	62A
Exhibit A—Stock Certificate	67A
Exhibit B—Proprietary Lease	12A
Exhibit C—Letter of Plaintiff's Attorney Dated July 30, 1973	69A
Exhibit D—Letter of Defendant's Attorney Dated August 7, 1973	70A
Exhibit B—Answer	71A
Exhibit C—Order and Judgment Appealed From	73A
Exhibit D—Opinion of Spiegel, J.	78A
Affidavit of Howard D. Ressler in Opposition to Motion	82A

	PAGE
Letter of Ballon, Stoll & Itzler to Hon. Robert J. Ward Dated April 30, 1975	86A
Opinion of Ward, J.	89A
Order of Robert J. Ward, J.	105A
Order to Show Cause of Robert J. Ward, J. With a Stay	106A
Affidavit of Kenneth S. Knigin	108A
Stay Order of Robert J. Ward, J.	114A

Docket Entries

75-0646

Girard, Barbara

vs

94th St. & 5th Ave Corp et al

75-0

DATE	NR.	PROCEEDINGS	Judge Ward
02-10-75		Filed Complaint & Issued Summons	
02-21-75		Filed Summons and marshals ret. Served: 94th Street & 5th Ave. Corp. on 2/11/75 Lawrence Wilkinson on 2/11/75 John H. Stoekey on 2/11/75 Thomas E. Murray on 2/11/75.	
03-12-75		Filed Stip & Order that defts. time to answer is extended to 3/18/75. So Ordered Ward J.	
03-20-75		Filed Defts'. affidavit & notice of motion to dismiss the complaint, ret. 4-1-75.	
03-20-75		Filed Defts'. memorandum of law in support of motion to dismiss.	
4-1-75		Filed Pltff's. affidavit in opposition to Deft's. motion to dismiss.	
4-1-75		Filed Pltff's. memorandum in opposition to Deft's. motion to dismiss.	
4-1-75		Filed Defts'. reply memorandum in support of motion to dismiss.	
04-25-75		Filed Defts'. memorandum in support of motion to dismiss.	
04-25-75		Filed Pltff's. supplementary memorandum in opposition to motion to dismiss.	
06-30-75		Filed Opinion #42698. For the foregoing reasons, defts. motion for summary judgment is granted. Settle Order on notice. Ward J. (mailed notice)	
07-01-75		Filed Memo. End. on motion dtd. 3/20/75. Motion granted in accordance with opinion filed herewith. Ward J. (mailed notice)	
07-16-75		Filed Order that defts. motion to dismiss is granted in all respects & that judgment be entered in favor of defts. against pltffs. Ward J. Judgment Ent. 7-17-75 Clerk, Entered 7-21-75. (mailed notice)	
07-28-75		Filed Pltffs. Notice of appeal from order dtd. 7-17-75. (mailed notice)	
08-07-75		Filed Order to Show Cause with a Stay, Order that all defts., attys. are hereby Stayed as indicated. Ret. 8-6-75 Ward J.	
08-07-75		Filed Memo. End. on Order to Show Cause dtd. 8-7-75. Motion granted as follows: Defts., attys are hereby stayed as indicat upon condition that pltff. give security in the amt. of \$25,000 for the payment of such costs & damages as may be incurred or by 8-8-75 at 5:00p.m. Ward J. (mailed notice)	
08-08-75		Filed Bond in the amount of \$25,000.00 by Transperca Inc. Co.	
Aug 14-75		Filed letter dated Apr 30-75 to Judge Ward from Howard D. Ressler.	
Aug 14-75		Filed letter dated Apr 30-75 to Judge Ward from James H. Schuyler.	

A TRUE COPY

RICHARD T. BURCHARDT, Clerk

By

Deputy Clerk

2 A

5.00pd

Notice of Appeal to the United States Court of Appeals

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x

BARBARA GIRARD

File No. 75 Civ. 646
R.J.W.

Plaintiff,

-against-

NOTICE OF APPEAL

94TH STREET AND FIFTH AVENUE
CORPORATION, LAWRENCE WILKINSON,
JOHN H. STOOKEY and THOMAS E.
MURRAY

Defendants.

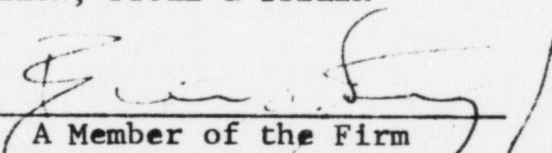
-----x

U.S. DISTRICT COURT
S.D. OF N.Y.
JUL 28 2 19 PM '75

NOTICE is hereby given that BARBARA GIRARD, the
Plaintiff above named, hereby appeals to the United States
Court of Appeals for the Second Circuit from the Final Order
entered in this action on the 17th day of July, 1975.

BALLON, STOLL & ITZLER

By


A Member of the Firm
Attorneys for the Plaintiff
Office & P. O. Address
1180 Avenue of the Americas
New York, New York 10036

SHEA, Goult, CLIMENKO, KRAMER & Carey, eds.
330 MADISON AVE.
NYC, N.Y.

Complaint

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

-----X
BARBARA GIRARD,

Plaintiff,

CIVIL ACTION NO.

-against-

94TH STREET AND FIFTH AVENUE CORPORATION,
LAWRENCE WILKINSON, JOHN H. STOOKEY
and THOMAS E. MURRAY,

Defendants.
-----X

75 CIV. 346
FEB 10 27 AM '75
COMPLAINT

Plaintiff, BARBARA GIRARD, by her attorneys,
BALLON, STOLL & ITZLER, complaining of defendants, respectfully
alleges as follows:

JURISDICTION

1. This Court has jurisdiction under 28 U.S.C.
§ 1343 (1), (3), (4) and 28 U.S.C. §1331 (a).

2. The matter in controversy exceeds, exclusive
of interest and costs, the sum of \$10,000.00.

AS AND FOR A FIRST CAUSE OF ACTION
AGAINST ALL DEFENDANTS

3. Plaintiff resides at 1125 Fifth Avenue, County,
City and State of New York.

4. Upon information and belief, defendant, 94TH
STREET AND FIFTH AVENUE CORPORATION, is a domestic corporation,
duly organized and existing under and pursuant to the laws

of the State of New York, and is engaged in business as a cooperative apartment house in the City, County and State of New York.

5. That upon information and belief, the corporate defendant, owns, operates, manages and controls the land and building at premises located at 1125 Fifth Avenue, County, City and State of New York.

6. Upon information and belief, defendants, LAWRENCE WILKINSON, JOHN H. STOOKEY and THOMAS E. MURRAY, are residents of the County, City and State of New York, and constitute the officers and the entire Board of Directors of the corporate defendant, and wholly dominate, operate and control all of its business and financial affairs.

7. Prior to the 10th day of January, 1968, and for some time thereafter up to the 16th day of October, 1973, plaintiff was married to STEPHEN S. GIRARD.

8. On or about the 10th day of January, 1968, STEPHEN S. GIRARD purchased 497 shares of capital stock of the corporate defendant, and by reason of said purchase became the owner of the proprietary lease to the 4th floor of the aforesaid premises for the term January 15, 1968 to May 31, 1981. A copy of said lease is annexed hereto and made a part hereof as Exhibit "A".

9. Thereafter, and in accordance with the proprietary lease, and by reason of STEPHEN S. GIRARD'S ownership of the shares of stock of the corporate defendant, the plaintiff, her husband, and the infant child of their marriage, duly entered upon and occupied the 4th floor apartment at 1125 Fifth Avenue, New York, New York.

10. Thereafter, and at diverse times, the corporate defendant accepted maintenance payments from BARBARA GIRARD.

11. On or about the 3rd day of May, 1973, BARBARA GIRARD and her husband entered into a separation agreement pursuant to which, inter alia, STEPHEN S. GIRARD duly conveyed and assigned to the plaintiff all of his right, title and interest in and to the aforesaid shares of capital stock and proprietary lease, in lieu of all payment of alimony, gave to the plaintiff sole custody of their infant child and vacated the premises. A copy of said separation agreement is annexed hereto and made a part hereof as Exhibit "B".

12. Thereafter, and on or about the 16th day of October, 1973, a judgment of divorce was entered in New York County, which judgment incorporated the aforesaid separation agreement. A copy of said judgment of divorce is annexed hereto and made a part hereof as Exhibit "C".

13. Upon completion of the aforesaid lease-stock transfer, the corporate defendant was duly notified of same, and plaintiff made demand upon the corporate defendant that it

duly recognize plaintiff as the owner of said stock, proprietary lease, and the lawful tenant entitled to peaceful possession thereof; and that defendant record on its books and records, plaintiff's ownership of said shares of stock and proprietary lease.

14. Thereafter, and upon receipt of plaintiff's demand as hereinabove alleged, the defendants conspired with each other and formed a deliberate design in purpose to injure this plaintiff solely for the reason that she is of the female sex, and to deprive her of her civil rights by reason of her sex and of her substantial property rights in the subject premises, and, in particular, the ownership of the aforesaid shares of stock and the proprietary lease in said premises, the purpose, intent and result of which was to enable, permit and allow the said defendants to receive for their own use and benefit and not for the benefit of plaintiff the sole and exclusive right to determine who shall own said shares of stock and the proprietary lease in the subject premises, and the said defendants did the various wrongful and unlawful acts hereinafter alleged, all in furtherance of such unlawful design and purpose.

15. As a result thereof, the defendants have continually and without cause denied and withheld their consent to the aforesaid lease-stock transfer to plaintiff and have wholly failed and refused, and continue to fail and refuse, to permit her record ownership of said stock, proprietary lease and peaceful

possession of the subject premises solely by reason of her sex as hereinabove alleged.

16. In furtherance of the said design and conspiracy as hereinabove alleged, and for the purpose of causing plaintiff to lose her substantial property rights in the subject premises, the said defendants between July 1973 and February, 1975:

(a) Advised, caused, permitted and allowed the President and the Board of Directors of the corporate defendant to deny plaintiff permission and authority to continue occupancy of the subject premises.

(b) Informed plaintiff that the corporate defendant could not and would not accept plaintiff as the true and lawful owner of the aforesaid shares of stock and the proprietary lease in the subject premises even though she had received said property rights by reason of a lawful assignment from STEPHEN S. GIRARD, as hereinabove stated; and specifically refused plaintiff an opportunity to appear and be present at any discussions or meetings of the officers and Board of Directors of the corporate defendant at which she could establish her proprietary interest in said shares of stock and lease, and refused to provide plaintiff with minutes of said meetings or with any statement, written or oral, which would explain the basis of the aforesaid acts.

(c) Failed and refused to accept any checks or other payments tendered by plaintiff or her agents in full payment of the maintenance required for occupancy of said demised premises, although plaintiff duly offered to pay same and has, in fact, tendered to the corporate defendant any and all payments required under the terms of the aforesaid proprietary lease, which payments were previously accepted by the corporate defendant from STEPHEN S. GIRARD and/or plaintiff.

(d) Failed and refused to accept any guarantee by any persons financially able to discharge any indebtedness that may arise to the corporate defendant by reason of plaintiff's continued occupancy of the subject premises as tenant thereof.

(e) Harrassed, annoyed and disturbed plaintiff in her occupancy of the subject premises by commencing legal proceedings for her eviction, and otherwise interfering with her peaceful enjoyment and occupation thereof.

(f) Deliberately and maliciously made telephone calls to plaintiff at unreasonable hours solely for the purpose of harrassing and annoying her in order to force plaintiff to vacate said premises and to withdraw her demand to the corporate defendant to recognize her as the lawful owner of the aforesaid shares of stock and proprietary lease to said premises.

17. The defendants did all of the acts and things hereinabove alleged in pursuance of the aforesaid conspiracy and scheme to cause plaintiff to be deprived of her substantial property rights in the subject premises as hereinabove alleged, and all of said acts and things were participated in and done by all of the defendants, or by one or more of them as steps in the said conspiracy.

18. All of the aforesaid acts, statements and conduct of the defendants aforesaid, were committed solely for the purpose of excluding plaintiff from occupancy of the premises or right to ownership of the aforesaid shares of stock in the corporate defendant; and solely for the reason that said plaintiff is of the female sex and for no other cause or reason.

19. By virtue of the acts, statements and conduct of the defendants aforesaid, plaintiff was deprived of her civil rights and substantial property rights in the subject premises.

20. The aforesaid acts, statements and conduct of the defendants constitute violations of plaintiff's statutory and constitutional rights, to wit, 42 U.S.C. §1985 (3), 42 U.S.C. §1983, Amendment 14 of the United States Constitution, and the New York Executive Law §296 (5) (a) (1).

AS AND FOR A SECOND CAUSE OF ACTION
AGAINST ALL DEFENDANTS

21. Plaintiff repeats and realleges each and every allegation contained in Paragraphs 1 through 20 with the same force and effect as if more fully set forth at length herein.

22. By reason of the foregoing, and, in particular, defendants' wilful and deliberate failure and refusal to give plaintiff an opportunity to be heard with respect to her right to be recognized and accepted as the lawful owner of the shares of stock and proprietary lease in the subject premises and defendants' arbitrary, capricious and unreasonable failure to so recognize plaintiff as a lawful tenant entitled to peaceful possession and occupancy of said premises as hereinabove alleged, defendants have deprived plaintiff of her constitutional rights of due process of law as provided for by the Constitution of the United States, the Constitution of the State of New York, and applicable federal statutes.

WHEREFORE, plaintiff demands judgment against all defendants, directing that the corporate defendant recognize plaintiff as the lawful owner of the aforesaid shares of stock and proprietary lease in the subject premises, and that the books and records of the corporate defendant adequately and properly reflect her ownership, interest and

11 A

lawful right to occupation of said premises and that all defendants, their agents, servants and/or employees be enjoined pendente lite and permanently from taking any and all acts constituting a wrongful interference with plaintiff's peaceful enjoyment and possession of said demised premises, and granting to plaintiff such other and further different relief as to the Court may seem just and proper.

DATED: NEW YORK, N.Y.
February 7, 1975

BALLON, STOLL & ITZLER

By 

(A Member of the Firm)

Attorneys for Plaintiff
1180 Avenue of the Americas
New York, New York, 10036
(212) 575-7900

4103421

12 A

Exhibit A Annexed to Complaint

Proprietary Lease

Apt. No.: 4th floor

Shares: 497

94th STREET AND FIFTH AVENUE CORPORATION,

Lessor,

to

STEPHEN S. GIRARD,

Lessee.

PROPRIETARY LEASE

NOT RECORDED

New York County
Section 5
Block 1505
Lot 69

PROPRIETARY LEASE

INDENTURE OF LEASE, made the 10th day of January, 1968, by and between 94TH STREET AND FIFTH AVENUE CORPORATION, a corporation organized under the laws of the State of New York, hereinafter called the "Lessor", and *Stephen S. Girard*, hereinafter called the "Lessee".

WHEREAS, the Lessor is the owner of the land and the building erected thereon in the Borough of Manhattan, City of New York, known as and by the street number 1125 Fifth Avenue, hereinafter called the building; and

WHEREAS, the Lessor has leased or proposes to lease the apartments in the building to the several owners of its capital stock by instruments known as proprietary leases; and

WHEREAS, the authorized capital stock of the Lessor is eight thousand (8,000) shares of a par value of One (\$1.00) Dollar each and of which the Lessee owns (or, concurrently with the execution and delivery hereof, will own) -497- shares, which have been allocated to the demised premises;

Now, THEREFORE, in consideration of the premises and of the rents, covenants and agreements hereinafter provided and contained, the Lessor hereby leases to the Lessee, subject to the terms and conditions hereinafter expressed, and the Lessee hereby hires and takes from the Lessor, all that certain space on the fourth floor of the building, known as apartment number 4th floor and hereinafter referred to as the "apartment",

To HAVE AND TO HOLD the apartment, with the appurtenances unto the Lessee and the executors, administrators, legal representatives and authorized assigns of the Lessee, upon the terms and conditions herein set forth, from the 15th day of January, 1968, until the 31st day of May, 1981 (unless the term shall sooner expire as hereinafter in this lease provided), at a rent for each year or portion of year during said term equal to the Lessee's proportionate share as hereinafter provided of the aggregate amount of the cash requirements of the Lessor, as hereinafter defined, for such year or portion of year, together with additional rent as hereinafter provided.

The cash requirements above referred to for each year or portion of year are hereby defined and shall be deemed to be such aggregate sum as the Board of Directors of the Lessor from time to time, by a resolution or resolutions adopted during such year or portion of year or the preceding year, shall determine, in its judgment, is to be paid by all the lessees under proprietary leases then in force (after deducting

Demised
Premises

Term

Cash
Requirements
Defined

any estimated rents or income to be received during such year other than rents under proprietary leases) on account of the estimated expenses and outlays of the Lessor to the close of such year, growing out of or connected with the ownership, maintenance and operation of such land and building, which sum may include among other things taxes, assessments, water rates, insurance premiums, operating expenses, management fees, employees' gratuity fund, alterations, replacements and repairs, expenses and liabilities incurred by the Lessor under or by reason of this or other leases, interest on mortgage indebtedness, mortgage amortization payments, the payment of any other liens or charges, the payment of any deficit remaining from a previous period, the creation of a reasonable contingency or other reserve or surplus fund and expenses for other corporate purposes. The Board of Directors of the Lessor may, from time to time, by resolution or resolutions duly adopted up to the close of the year for which such cash requirements have been so fixed or determined, increase or diminish the amount previously fixed or determined for such year. The Board of Directors may include in the cash requirements for any year any liabilities or items of expense which accrued or became payable in a previous year, or which might have been included in the cash requirements for a previous year but were not included therein, and also any sums which the Board of Directors may deem it necessary or prudent to provide as a reserve against liabilities or expenses then accrued or thereafter to accrue although not payable in that year.

Rent

The rent payable by the Lessee in and for each year or portion of year of said term shall be a sum (within the limits and on the conditions hereinabove provided) bearing to the aggregate amount of such cash requirements for such year, determined as aforesaid, the same ratio as that which the number of shares of stock of the Lessor, owned by the Lessee at the time of the execution hereof as stated in the recitals of this proprietary lease, bears to the aggregate of the shares similarly specified in all the proprietary leases in effect at the time of the fixing and determination of such cash requirements, and such rent, together with any additional rent accruing under this lease, shall be payable monthly in advance or in such payments or instalments as shall be required by resolution of the Board of Directors of the Lessor, and at such times as shall be provided in such resolution.

The Board of Directors of the Lessor shall have full power to prescribe the manner of maintaining and operating the building, and to determine the cash requirements of the Lessor to be paid as aforesaid by the lessees under proprietary leases.

The power and authority to determine and establish the amount of and to require payment of said rent above provided for shall be possessed only by the Board of Directors of the Lessor elected by its stockholders and shall not pass to or be exercised by:

(a) any creditor, receiver, or trustee of the Lessor or any representative of any such creditor, receiver or trustee of the Lessor;

(b) any Board of Directors elected by any such creditor, receiver or trustee or by the representative of any such creditor, receiver or trustee.

ARTICLE I

THE LESSOR HEREBY COVENANTS WITH THE LESSEE, AS FOLLOWS:

FIRST: The Lessor shall keep in good repair the foundations, side-walks, walls, supports, beams, roofs, terraces, gutters, fences, cellars, chimneys, entrances and street and court doorways, main halls, main stairways, windows, fire escapes, elevators, pumps and tanks, and all main and principal pipes for carrying water, gas or steam through the building, and the main drain pipes and electrical conduits, together with all plumbing, heating and other apparatus intended for the general service of the building, it being agreed that the Lessee shall give the Lessor prompt notice of any accident or defect known to the Lessee and requiring repairs to be made: and all such repairs shall be at the expense of the Lessor, unless the same shall have been rendered necessary by the act or neglect or carelessness of the Lessee, or any of the family, guests, employees or subtenants of the Lessee, in which case the expense is to be borne by the Lessee.

Repairs

SECOND: The Lessor shall maintain and manage the building as a first-class apartment building, and shall keep the elevators and the public halls, cellars and stairways clean and properly lighted and heated, and shall provide elevator service and the number of attendants requisite in the judgment of the Board of Directors for the proper care and service of the building, and shall, without extra cost to the Lessee, provide the apartment with garbage-disposal service and with a proper and sufficient supply of hot and cold water and of heat.

Maintenance

The covenants by the Lessor herein contained are subject, however, to the full power of the Board of Directors of the Lessor to prescribe the manner of maintaining and operating the building and to determine the cash requirements of the Lessor, as hereinabove stated, and subject to the further proviso that there shall be no diminution or abatement of rent or other compensation accruing to the Lessor for the failure by the Lessor to perform the same or for interruption or curtailment of service, when such failure, interruption or curtailment shall be

due to accident or to alterations or repairs desirable or necessary to be made, or to inability or difficulty in securing supplies or labor, or to some other cause not gross negligence on the part of the Lessor; and all of the covenants by the Lessor in this instrument contained are also subject to the provisions of paragraph SIXTEENTH of Article II hereof.

Damage to
Building

THIRD: In case the building shall be partly damaged by fire or other cause, it shall be repaired as speedily as is reasonably possible, at the expense of the Lessor, so as to conform substantially to the plans and specifications under which the building was completed, and, in case the damage shall be so extensive as to render the apartment untenable, the rent hereunder shall cease until the apartment shall again be rendered tenantable; and in case of the total destruction of the building by fire or otherwise, the rent shall be paid up to the time of such destruction, and thereupon this lease and all rights and obligations of the parties hereunder, and the tenancy hereby created, shall wholly cease and expire.

Books of
Account

FOURTH: The Lessor shall keep full and correct books of account at the office of its managing agent or at such other place as the Board of Directors may from time to time determine, and the same shall be open during all reasonable hours to inspection by the Lessee, or a representative of the Lessee.

Accompanying
Stock to be
Specified in
Proprietary
Leases

FIFTH: In every proprietary lease heretofore executed by the Lessor there has been specified, and in every proprietary lease hereafter executed by it there will be specified, the number of shares of the capital stock of the Lessor issued therewith, which number, in relation to the aggregate of all numbers of shares similarly specified in all the proprietary leases at the time in force, shall constitute the basis for fixing, as hereinbefore provided, the proportionate share of the aggregate amount of the cash requirements of the Lessor, as hereinbefore defined, which shall be payable as rent by the Lessee. In the event that after the fixing of the amounts payable as rent by the lessees under proprietary leases for any period of time, one or more additional proprietary leases be made, thus increasing the aggregate number of shares specified in all proprietary leases, the rent to be paid under such additional lease or leases, unless and until otherwise fixed by the Board of Directors, shall be at the same rate per share of stock specified in such additional lease or leases as applied to the shares of stock specified in all other proprietary leases in effect at the time of the fixing and determination of such cash requirements.

17 A

5

SIXTH: The Lessee upon paying the rent and performing the covenants and complying with the conditions on the part of the Lessee to be performed, as herein set forth, shall, at all times during the term hereby granted, quietly have, hold and enjoy the apartment without any let, suit, trouble or hindrance from the Lessor.

Quiet
Enjoyment

SEVENTH: A Lessee of an apartment embracing the penthouse or a portion thereof shall have and enjoy the exclusive use of the roof appurtenant to such apartment as shown on the plan of the penthouse, subject to all the applicable provisions of this lease and to the use of such roof by the Lessor to enable it to fulfill its obligations hereunder, except that the Lessor shall have an irrevocable license to install and maintain on the roof one master television antenna. A Lessee of an apartment having direct access to a terrace shall have and enjoy the exclusive use of the portion of such terrace which immediately adjoins the apartment, subject to all the applicable provisions of this lease and to the use of such terrace by the Lessor to enable it to fulfill its obligations hereunder. It is understood and agreed that there shall be no duty upon the Lessor to keep such roof or terrace clean or free from ice, snow or debris.

Penthouse and
Terrace

EIGHTH: In the event that as of the date of the commencement of this lease, any third party should be in possession or have a right to possession of the demised premises pursuant to lease, rental agreement or as a statutory tenant, then the Lessor does hereby assign to the Lessee any and all of the Lessor's rights against said third party, including the right to collect rent, pursuant to any such lease, rental agreement or under any such statutory tenancy.

Assignment of
Lessor's Rights

NINTH: In the event that as of the date of the commencement of this lease, the Lessee has the right to possession of the premises under a written lease, rental agreement or statutory tenancy, then this lease shall supersede such prior lease, rental agreement or statutory tenancy and the same shall be null and void and of no force and effect after the date of commencement of this lease.

Cancellation
of Prior
Agreements

ARTICLE II

THE LESSEE HEREBY COVENANTS WITH THE LESSOR, AS FOLLOWS:

Payment
of Rent

FIRST: The Lessee will pay to the Lessor, or to its managing agent, the rent upon the terms, at the times and in the manner herein provided, without any deduction on account of any set-off or claims which the Lessee may have against the Lessor, and if the Lessee shall fail to pay any installment of rent within one month from the time when the same becomes due, the Lessee shall pay interest thereon at the rate of six per cent per annum from the date when such installment shall have become due to the date of the payment thereof, and such interest shall be deemed additional rent hereunder.

Electric and
Telephone
Service

If the Lessor shall contract for the furnishing of electric current by a public service corporation for the building, the Lessee will purchase from the Lessor all electric current that the Lessee shall require and will pay the Lessor for the same as the amount consumed shall be indicated by the meter furnished therefor. The rates for said current payable by the Lessee shall be the same as those charged by said public service corporation for a consumption similar to that of the Lessee and the Lessee shall comply with rules and regulations similar to those prescribed by said public service corporation. If the Lessor shall maintain a telephone switchboard in the building with connection therewith in the demised apartment, the Lessee will pay the Lessor for such service at the same rate as shall be charged by the Lessor to other Lessees in the building. Payments for such electric current and telephone service shall be due monthly as and when bills therefor are rendered and if at any time such payments are in default, they shall be deemed to be additional rent due and payable on the first day of the next following month after such bills are rendered or at the option of the Lessor on the first day of any succeeding month.

Rights Upon
Default

SECOND: In the event of the Lessor's resuming possession of the apartment, either by summary proceedings, action of ejection or otherwise, because of default by the Lessee in the payment of any rent or in the payment of any part of the same, or on the expiration of the term pursuant to a notice given as provided in Article III hereof upon the happening of any event specified in sub-sections (a), (b), (c), (d), (e), and (g) of paragraph FIRST of Article III, the Lessor may, at its option, either (1) relet the apartment for the Lessor's own account or (2) from time to time relet the apartment as the agent of or for the account of the Lessee. If the Lessor relets the apartment as the agent of or for the account of the Lessee, it shall, after reimbursing itself for its reasonable expenses in connection therewith, including a reasonable amount for decorations, alterations and repairs in and to the apartment, apply the remaining avails of such reletting to the payment of any and all sums then due from the Lessee to the Lessor and which would thereafter have

become due from the Lessee under the provisions of this lease if the Lessor had not so resumed possession, accounting to the Lessee at the expiration of each of the several terms of such reletting for the surplus, if any. If at any time or from time to time before the expiration of the term originally demised hereunder, there shall be a deficiency between the avails of such reletting and such sums as would have become due hereunder, the Lessee agrees to pay such deficiency upon demand. If the Lessee shall at any time sublet the apartment and shall default for a period of one month in the payment of any rent, the Lessor may, at its option, so long as such default shall continue, demand and receive from any subtenant of the Lessee occupying the apartment the rent due or becoming due from such subtenant to the Lessee, up to an amount sufficient to pay all sums due from the Lessee to the Lessor, and any such payment of such rent to the Lessor shall be sufficient payment and discharge of such subtenant as between such subtenant and the Lessee, to the extent of the amount so paid; and any such demand or acceptance of rent from any subtenant, or from any assignee hereof, shall not be deemed a consent or approval of any sublease or assignment by the Lessee.

Collection of
Rent from
Undertenants

THIRD: The omission of the Board of Directors of the Lessor, before the expiration of any year of said term, to fix the rent hereunder for that or the next year, shall not be deemed a waiver or modification in any respect of the covenants or provisions of this lease, or a release of the Lessee from the obligation to pay the rent or any instalment thereof for that or any subsequent year, provided such rent shall ultimately be fixed.

Failure to
Fix Rent

FOURTH: The Lessor may from time to time establish such reasonable house rules as its Board of Directors may deem necessary for the management and control of the building, and may also from time to time alter, amend and repeal such rules, and this lease shall be in all respects subject to such rules, which, when a copy thereof has been furnished to the Lessee, shall be taken to be part hereof, and the Lessee shall obey all such rules and see that they are faithfully observed by the family, guests, employees and subtenants of the Lessee, it being understood that such rules shall apply to and be binding upon all of the tenants of the building, whether stockholders of the Lessor or not, but that the Lessor shall not be responsible to the Lessee for the non-observance or violation of such rules by any other lessee or person other than employees of the Lessor. Without limiting the generality of the foregoing, such house rules may regulate and control the use of any roof or terrace appurtenant to the apartment, for the installation and maintenance of television antennae, or otherwise, and may require the Lessee to keep such roof or terrace clean or free from ice, snow or debris. Such house rules so established by the Board of Directors may be amended from time to time by action of the stockholders at any annual meeting or a special meeting called for that purpose.

House Rules

Use of
Premises

FIFTH: The Lessee shall not occupy or use the apartment, or permit the same or any part thereof to be occupied or used, for any purpose other than as a private dwelling apartment for the Lessee, the family and servants of the Lessee, except such portions of the buildings as may be allocated by the Board of Directors of the Lessor to the use or offices or servants' rooms, and shall not permit or suffer anything to be done or kept in the apartment which will increase the rate of fire insurance on the building or the contents thereof, or which will interfere with the rights of other tenants or annoy such tenants by unreasonable noises or otherwise, or which will obstruct the public halls or stairways of the building. The Lessee will comply with all the requirements of the Board of Health and other governmental authorities and with all laws, ordinances, rules and regulations with respect to the apartment; and if, by reason of the occupancy or use of the apartment by the Lessee, the rate of fire insurance on the building or its contents shall be increased, the Lessee shall become personally liable for the additional insurance premiums upon all policies covering the building, and the Lessor shall have the right to collect the same, when charged to the Lessor, as additional rent for the apartment.

Subletting

SIXTH: The Lessee shall not sublet the whole or any part of the apartment for any term to any person or persons without the Lessor's written consent, authorized by a resolution of the Board of Directors, or signed by a majority of the directors, or by lessees owning of record at least a majority of the capital stock of the Lessor accompanying proprietary leases then in force. Whenever the Lessee applies to the Lessor for a consent to a subletting, the Lessee shall deliver to the Lessor a copy of the sublease to which consent is requested, which sublease shall contain a covenant by the sublessee under such sublease that (1) if the term of the sublease extends beyond the date of the expiration of the term of the within lease and the within lease is not extended, or (2) if the Lessor shall resume possession of the apartment by summary proceedings or ejectment or other means, or by any termination of this lease, pursuant to a notice given, as provided in Article III of this lease, or (3) if the Lessee shall exercise the option to cancel this proprietary lease, as provided in Article IV of this lease, on a date prior to the expiration of the term of such sublease, then in any of such events such sublease shall terminate automatically upon the date of termination or expiration of this proprietary lease and the sublessee shall forthwith surrender possession of the premises to the Lessor, or, at the option of the Lessor, that the sublessee will execute an agreement with the Lessor whereby in consideration of the Lessor's agreeing to permit such sublessee to remain in possession of the apartment until the end of the term of such sublease, the sublessee will attorn to the Lessor and will pay to the Lessor the rent reserved in such sublease from and after the date of the expiration or termination of this proprietary lease or, if this

21 A

9

proprietary lease be terminated under the provisions of Article IV of this lease, then from and after the 31st day of August preceding such termination to the expiration of the term of the sublease, and during such period perform all the terms and conditions of such sublease.

Except as provided in Article IV of this lease, the Lessee shall not assign this lease, or any interest therein, and no such assignment shall take effect as against the Lessor for any purpose, unless and until all of the following requirements have been complied with and satisfied:

Assignment

1. An instrument of assignment containing a covenant by the assignee to perform and comply with all the covenants and conditions of this lease to be performed or complied with by the Lessee on and after the effective date of said assignment must be executed and acknowledged by the assignee and delivered to the Lessor.

2. All shares of stock of the Lessor accompanying this lease must be transferred to the assignee.

3. All sums due from the Lessee, together with a sum to be fixed by the Board of Directors of the Lessor to cover reasonable legal and other expenses of the Lessor in connection with such assignment and transfer of stock, must be paid to the Lessor.

4. A written consent to such assignment, authorized by a resolution of the Board of Directors, or signed by a majority of the directors, or by lessees owning of record at least a majority of the capital stock of the Lessor accompanying proprietary leases then in force, must be delivered to the Lessor. In the event the Lessee should die during the term of this lease, then the Board of Directors or the other Lessees owning capital stock of the Lessor shall not unreasonably withhold the consent provided for in this paragraph to any assignment or transfer of the stock and the lease which the Lessee may make in his or her last will and testament, or through the acts of his or her administrator or executor, to a financially responsible member of the Lessee's immediate family; provided, however, that the conditions of this paragraph SIXTH are complied with.

Whenever the Lessee shall, under the provisions of this lease, be permitted to assign and shall so assign the same, and the assignee shall deliver to the Lessor an instrument in writing assuming all of the unfulfilled obligations of the assignor hereunder, the assignor shall have no further liability on any of the covenants of this lease to be thereafter performed and, upon the making of any assignment of this lease, as herein provided and permitted, the same shall, at the option and election of the Lessor, be surrendered, and a new lease for the remainder of the term of this lease, in the same form, shall in such case be entered into between the Lessor and the assignee.

Release of
Lessee Upon
Assignment

No executor, administrator, personal representative or successor of the Lessee, or trustee, or receiver of the property of the Lessee, or anyone to whom the interest of the Lessee hereunder shall pass by law,

shall be entitled to assign this lease, or to sublet the apartment or any part thereof, except upon the compliance with the requirements of this paragraph SIXTH. The character of and restriction upon the occupancy of the apartment, and upon assignment of this lease, as hereinbefore expressed, restricted and limited, are an especial consideration and inducement for the granting of this lease by the Lessor to the Lessee; and in the event of a violation by the Lessee of the restrictions and covenants herein contained in respect to either subletting or assignment, this lease may be terminated and shall expire at the option of the Lessor as hereinafter provided, and the Lessor may cease performance of its covenants contained in Article I of this lease, and may restrain and prevent the occupancy of the apartment by any one other than the Lessee or the family of the Lessee.

Interior
Repairs

SEVENTH: The Lessee shall keep the interior of the apartment in good repair, and the Lessor shall not be held answerable for any repairs in or to the same except as hereinbefore specifically provided, and in case of the refusal or neglect of the Lessee, during ten days after notice in writing from the Lessor, to make such repairs or to restore the apartment to good condition, such repairs or restoration may be made by the Lessor, which shall have the right, by its officers or authorized agents, to enter the apartment for that purpose, and to collect the cost of such repairs or restoration as additional rent for the apartment. In addition to decorating and keeping the interior of the apartment in good repair the Lessee shall be responsible for the maintenance or replacement of any ice boxes, refrigerators, stoves or ranges that may be in the apartment.

Alterations

EIGHTH: The Lessee shall not, without first obtaining the written consent of the Lessor, make in the apartment, or on any roof or terrace appurtenant thereto, any structural alteration or any alteration of the water, gas or steam pipes, electrical conduits or plumbing, or, except as hereinafter authorized, remove any additions, improvements or fixtures from the apartment. If the Lessee shall heretofore or hereafter place in the apartment at the Lessee's own expense any additions, improvements or fixtures, such as mantels, lighting fixtures, refrigerators, cooking ranges, woodwork, panelling, ceilings, doors or decorations, which can be removed without structural alterations, then the Lessee shall have the right, prior to the termination of this lease, to remove the same at the Lessee's own expense, provided: (a) that the Lessee at the time of such removal shall not be in default in the payment of rent or in the performance of any other provision or condition of this lease; (b) that upon any such removal, the Lessee shall give written notice thereof in advance to the Lessor; (c) that the Lessee shall pay the cost of any such removal and shall repair any damage resulting therefrom; (d) that the Lessee shall replace and reinstall at the Lessee's own expense any equipment that was in the apartment

Removal of
Fixtures
Installed
by Lessee

23 A

11

when the Lessee entered into possession or shall replace and reinstall substitutes of a kind and quality customary in buildings of this type and satisfactory to the Lessor.

On the expiration of the term hereby granted, or upon a sooner termination of this lease, the Lessee shall surrender to the Lessor possession of the apartment with all additions, improvements and fixtures then included therein except as hereinabove provided.

NINTH: This lease is and shall be subject and subordinate to the mortgage now a lien upon the land and building and to any and all extensions, modifications, renewals and replacements thereof and this lease shall be subject and subordinate to the lien of any other mortgage or mortgages which shall at any time be placed on the land and building. The Lessee shall at any time, and from time to time, on demand, execute any instruments that may be required by any mortgagee, or by the Lessor, for the purpose of more formally subjecting this lease to the lien of any such mortgage or mortgages, and the duly elected officers, for the time being, of the Lessor are and each of them is hereby irrevocably appointed the attorney-in-fact and agent of the Lessee to execute the same upon such demand, and the Lessee hereby ratifies any such instrument hereafter executed by virtue of the power of attorney hereby given.

Lease
Subordinate
to Mortgages

TENTH: In case there shall be filed a notice of mechanic's lien against the building, for, or purporting to be for, labor or material alleged to have been furnished or delivered at the building or the apartment to or for the Lessee, or anyone claiming under the Lessee, the Lessee shall forthwith cause such lien to be discharged by payment, bonding or otherwise; and if the Lessee shall fail to cause such lien to be discharged within twenty days after the filing of such notice, the Lessor may cause such lien to be discharged by bonding or by paying the amount thereof or otherwise, without investigation as to the validity thereof or of any offsets or defenses thereto, and shall have the right to collect, as additional rent, all amounts so paid and all costs and expenses paid or incurred in connection therewith, including reasonable attorneys' fees and disbursements, together with interest thereon from the time or times of payment.

Mechanic's
Liens

ELEVENTH: The Lessee shall always in good faith endeavor to observe and promote the co-operative purposes for the accomplishment of which the Lessor was incorporated.

Co-operation

Right of
Entry

TWELFTH: The Lessor and its agents shall be permitted to visit and examine the apartment at any reasonable hour of the day, and workmen may enter at any time, when authorized by the Lessor or the Lessor's agents, to make or facilitate repairs in any part of the building and to remove such portions of the walls, floors and ceilings of the apartment as may be required for the purpose of making such repairs but the Lessor shall at its own cost and expense thereafter restore the premises to their proper and usual condition. If the Lessee shall not be personally present to open and permit an entry into the apartment, at any time, when for any reason an entry therein shall be necessary or permissible hereunder, the Lessor or the Lessor's agents may forcibly enter the apartment without rendering the Lessor or such agents liable to any claim or cause of action for damages by reason thereof (if during such entry the Lessor shall accord reasonable care to the Lessee's property), and without in any manner affecting the obligations and covenants of this lease; and the right and authority hereby reserved do not impose, nor does the Lessor assume by reason thereof, any responsibility or liability whatsoever for the care or supervision of the apartment, or any of the pipes, fixtures, appliances or appurtenances thereon contained or therewith in any manner connected, except as may be herein specifically provided.

Waivers

THIRTEENTH: The failure of the Lessor to insist, in any one or more instances, upon a strict performance of any of the terms, covenants, conditions or agreements of this lease, or to exercise any right or option herein contained, or to serve any notice, or to institute any action or summary proceeding, or otherwise to act as though this lease had expired pursuant to the provisions of Article III hereof, shall not be construed as a waiver, or a relinquishment for the future, of such covenant or option or right thereafter to serve notice and to have this lease expire under the provisions of said Article III, but such covenant or option or right shall continue and remain in full force and effect. The receipt by the Lessor of rent, with knowledge of the breach of any covenant hereof, shall not be deemed a waiver of such breach, and no waiver by the Lessor of any provision hereof shall be deemed to have been made unless expressed in writing and signed by an officer of the Lessor pursuant to authority contained in a resolution of its Board of Directors; and even though a consent to an assignment hereof, or to any subletting, be given, no further assignment or subletting shall be made without express consent in writing given as hereinbefore provided.

Notices

FOURTEENTH: Any notice by the Lessor to the Lessee shall be deemed to be duly given, and any demand by the Lessor upon the Lessee shall be deemed to have been duly made, if enclosed in a postpaid envelope addressed to the Lessee at 1125 Fifth Avenue, New York, 28, N. Y., and mailed by registered mail in any general or branch post office; any notice by the Lessee to the Lessor shall be deemed to be duly given if in writing and delivered to an officer of the Lessor, or mailed by

25 A

13

registered mail addressed to the Lessor or its agent at 1125 Fifth Avenue, New York 28, N. Y.

FIFTEENTH: If the Lessee shall at any time be in default hereunder, or if the Lessor shall institute an action or summary proceeding against the Lessee based upon such default, the Lessee will reimburse the Lessor for the expense of attorneys' fees and disbursements thereby incurred by the Lessor, so far as the same are reasonable in amount, and the Lessor shall have the right to collect the same as additional rent.

Attorneys'
Fees

SIXTEENTH: The Lessor shall not be liable for any failure of heat, water supply, electric current, telephone or elevator service or other service to be supplied by the Lessor hereunder, or for injury or damage to person or property caused by the elements or by another tenant or person in the building, or resulting from steam, gas, electricity, water, rain or snow which may leak or flow from any part of the building, or from any of its pipes, drains, conduits, radiators, boilers, tanks, appliances or equipment, or from any other place, unless caused or due to the negligence of the Lessor. The Lessor shall not be liable for interference with light or other incorporal hereditaments by anybody other than the Lessor. The Lessor shall not be responsible for any damage to any automobile or other vehicle left in the care of any employee of the Lessor by the Lessee, and the Lessee hereby agrees to hold the Lessor harmless from any liability arising from any injury to person or property caused by or with such automobile or other vehicle while in the care of such employee. The Lessor shall not be responsible for any package or article left with or entrusted to any employee of the Lessor, or for the loss of any property by theft or otherwise. If the Lessor shall before, during or after the term of this lease, furnish to the Lessee any storage space, use of laundry or any other facility outside of the apartment, the same shall be furnished gratuitously by the Lessor, and if any person shall use the same, such use shall be entirely at the risk of such person, and the Lessor shall not be liable for any loss of property thereon, or for any damage or injury whatever to person or property therein or in connection therewith. No diminution or abatement of rent, or other compensation, shall be claimed or allowed for in convenience or discomfort arising from the making of repairs or improvements to the building or to its appliances, or from any space taken to comply with any law, ordinance or order of a governmental authority.

Lessor's
Immunities

ARTICLE III

IT IS HEREBY MUTUALLY AGREED AS FOLLOWS:

FIRST: If upon, or at any time after, the happening of any of the events mentioned in subdivisions (a) to (i) inclusive of this paragraph FIRST, the Lessor shall give to the Lessee a notice stating that

Expiration
of Lease

the term hereof will expire on a date at least twenty days thereafter, this lease shall expire on the date so fixed in such notice, and all right, title and interest of the Lessee hereunder shall wholly cease and expire, it being the intention of the parties hereto to create hereby a conditional limitation, and thereupon the Lessor shall have the right to re-enter the apartment and to remove all persons and personal property therefrom, either by summary dispossession proceedings, or by any suitable action or proceeding at law or in equity, or by force or otherwise, and to repossess the apartment in its former estate as if this lease had not been made, and no liability whatsoever shall attach to the Lessor by reason of the exercise of the right of re-entry, re-possession and removal herein granted and reserved.

Lessee
Ceasing
to Own
Accompanying
Stock

(a) If at any time during the term of this lease the Lessee or his executors, administrators or legal representatives shall cease to be the owner of all of the shares of stock which are hereinbefore stated to be owned by the Lessee and allocated to this lease, or if this lease shall pass or be assigned to anyone who is not then the owner of all of said shares.

Lessee
Becoming
a Bankrupt

(b) If (1) the Lessee hereof shall be declared a bankrupt under the laws of the United States or adjudicated insolvent or take the benefit of any insolvency act; or (2) a receiver or trustee of the property of such Lessee shall be appointed by any Court; or (3) the Lessee hereof shall make a general assignment for the benefit of creditors; or (4) any of the shares of said stock owned by such Lessee shall be duly levied upon under Court process; or (5) this lease or any of the shares of said stock owned by such Lessee shall be pledged except with the consent of the Board of Directors of the Lessor.

Assignment
or Subletting

(c) If at any time there be an assignment of this lease, or any subletting hereunder, without full compliance with the requirements of paragraph SIXTH of Article II hereof.

Default
in Rent

(d) If the Lessee shall be in default for a period of two months in the payment of any rent or additional rent or of any instalment thereof, hereinbefore provided for.

Default
in Other
Covenants

(e) If the Lessee shall default in the performance of any covenant or provision hereof, other than the covenant to pay rent, for thirty days after written notice of such default shall have been given by the Lessor.

Termination
of All
Proprietary
Leases

(f) If the lessees owning of record two-thirds or more of the capital stock of the Lessor accompanying proprietary leases then in force and being two-thirds in number of such lessees shall, not less than four months before the intended date of termination, determine to terminate all proprietary leases on May 31, 1953, or on any May 31 thereafter. Such determination shall be evidenced by a written notice to the Lessor, executed by such lessees, expressing such determination

or by their vote in favor of such termination taken at a meeting of stockholders duly called for the purpose. Upon the receipt of such notice or the casting of such vote the Lessor will immediately give to the holders of all proprietary leases then in force the notice required by paragraph FIRST of this Article III to terminate all proprietary leases in accordance with such determination.

(g) If at any time the Lessor shall determine, upon the affirmative vote of two-thirds or more in interest of the holders of record of the capital stock of the Lessor accompanying proprietary leases then in force, at a meeting of such stockholders duly called to take action on the subject, that because of objectionable conduct on the part of the Lessee, or of a person dwelling in or visiting the apartment, the tenancy of the Lessee is undesirable. Repeatedly to violate or disregard the rules and regulations hereunto attached or hereafter established in accordance with the provisions of this lease, or to permit or tolerate a person of dissolute, loose or immoral character to enter or remain in the building or the apartment, shall be deemed to be objectionable conduct.

Lessee's
Objectionable
Conduct

(h) If at any time the building or a substantial portion thereof shall be taken by condemnation proceedings.

Condemnation

(i) If at any time the Lessor shall determine, upon the affirmative vote of the holders of record of two-thirds or more of the capital stock of the Lessor accompanying proprietary leases then in force, at a stockholders' meeting duly called for that purpose, to sell the entire property of Lessor above described, in which event this lease and all right, title, interest and estate of the Lessee shall terminate at the time fixed pursuant to such vote for the consummation of the sale of said property, not less than sixty days after the date of such meeting; and the Lessee shall then surrender this lease and said premises so as to enable Lessor to deliver good title to any purchaser of said property, free and clear of any estate or interest of such Lessee.

SECOND: The Lessee hereby expressly waives any and all right of redemption in case the Lessee shall be dispossessed by judgment or warrant of any court or judge; the words "enter", "re-enter" and "re-entry" as used in this lease are not restricted to their technical legal meaning; and in the event of a breach or threatened breach by the Lessee of any of the covenants or provisions hereof, the Lessor shall have the right of injunction, and the right to invoke any remedy allowed at law or in equity, as if re-entry, summary proceedings and other remedies were not herein provided for.

Waiver of
Right of
Redemption

THIRD: Upon the termination of this lease under the provisions of subdivisions (a), (b), (c), (d), (e), or (g) of paragraph FIRST of this Article, the Lessee shall remain liable as provided in paragraph SECOND of Article II of this lease. Upon the termination of this lease

Surrender of
Possession

under the provisions of subdivisions (f), (h) and (i) of paragraph FIRST of this Article, or upon the expiration of this lease the Lessee shall be and remain liable to pay all rent, additional rent and other charges due or accrued and to perform all covenants and agreements of the Lessee up to the date of such termination, and on or before such termination the Lessee shall vacate the apartment and remove therefrom all property of the Lessee which upon such termination does not become the property of the Lessor under the provisions of paragraph EIGHTH of Article II hereof and surrender possession of the apartment to the Lessor or its assigns, and upon demand of the Lessor or its assigns shall execute, acknowledge and deliver to the Lessor or its assigns any instrument which may reasonably be required for surrendering all estate and interest of the Lessee in the apartment, or in the building of which it is a part.

Sale of
Stock

FOURTH: Upon the termination of this lease under the subdivisions (a), (b), (c), (d), (e) or (g) of paragraph FIRST of this Article, the Lessee shall surrender to the corporation his certificate or certificates for the shares of stock of the corporation owned by the Lessee and allocated to the apartment. Whether or not said certificate or certificates are surrendered, the Lessor may issue a new proprietary lease on the apartment and issue a new stock certificate for the shares of stock of the Lessor owned by the Lessee and allocated thereto. The Lessor may apply the proceeds received for the issuance of such stock towards the payment of the Lessee's indebtedness hereunder, including interest, attorneys' fees and other expenses incurred by the Lessor and if the proceeds are sufficient to pay the same the Lessor shall pay over any surplus to the Lessee, but if insufficient the Lessee shall remain liable for the balance of the indebtedness. Upon the issuance of any such new proprietary lease and stock certificate, the Lessee's continuing liability hereunder shall cease and the Lessee shall only be liable for rent and expenses accrued to that time.

ARTICLE IV

IT IS FURTHER MUTUALLY AGREED AS FOLLOWS:

Lessee's
Option to
Cancel

FIRST: This lease may be cancelled by the Lessee on May 31, 1953, or on any May 31 thereafter, upon complying with all the provisions of this Article IV. Irrevocable written notice of intention to cancel must be served by the Lessee upon the Lessor on or before November 1 in the calendar year preceding the calendar year in which such cancellation is to occur. At the time of the service of such notice of intention to cancel there must be deposited with the Lessor by the Lessee:

Deposits
Required

(a) a proper assignment of Lessee's counterpart of this lease whereby the full and absolute right, title and interest in and to this lease is assigned as the Lessor may direct, as of April

30th of the year of cancellation, free from all subleases, liens, encumbrances and charges whatsoever;

(b) the Lessee's certificate for the shares of stock of the Lessor which accompany this lease, duly stamped and endorsed in blank for transfer;

(c) a written statement setting forth in detail those additions, improvements and fixtures, such as mantels, lighting fixtures, refrigerators, cooking ranges, woodwork, panelling, ceilings, doors and decorations, placed in the apartment at the Lessee's expense which the Lessee has, under the terms of this lease, the right to remove, and which the Lessee desires to remove.

SECOND: In the event of giving such notice of intention to cancel, the Lessee shall:

Additional
Payments
by Lessee

(1) subject to the limitation and conditions embodied in paragraph EIGHTH of Article II hereof, replace all mantels, lighting fixtures, refrigerators, cooking ranges, woodwork (other than panelling), ceilings, doors, or other fixtures removed by the Lessee, with others of a kind and quality customary in buildings of this type, and pay the cost of such replacement; and

(2) pay the cost of repairing any damage resulting from the removal by the Lessee of any panelling or other additions, improvements or fixtures, the cost of replacing which is not required to be paid by the Lessee.

THIRD: All additions, improvements and fixtures which are removable under the terms of this lease and which are enumerated in the statement made as provided in subdivision (c) of paragraph FIRST of this Article IV, shall be removed by the Lessee prior to the 30th day of April next preceding the 31st day of May named in the notice of election to cancel as the date for the cancellation of this lease, and on or before said 30th day of April the Lessee shall deliver possession of the apartment to the Lessor free from all subleases, liens, encumbrances or other charges and remove therefrom all property of the Lessee which upon such cancellation does not become the property of the Lessor under the provisions of paragraph EIGHTH of Article II hereof and pay to the Lessor (a) all rent, additional rent and other charges which shall be payable under this lease up to and including the 31st of May succeeding such 30th day of April, and (b) the amounts due under subdivision (2) of paragraph SECOND of this Article IV. The requirements for delivery of possession to the Lessor shall be waived if pursuant to the provisions of paragraph SIXTH of Article II of this lease, the Lessor shall have on or before April 30th entered into an agreement with any sublessee whereby said sublessee is permitted by the Lessor to remain in possession of the apartment.

Removal
of Fixtures

Possession

Permission
to Show
and Occupy
Premises

FOURTH: The Lessor and its agents may show the apartment to prospective or succeeding tenants at any time and from time to time after the giving of notice of the Lessee's intention to cancel this lease as in this Article IV provided, and after the 30th day of April next succeeding the date on which such notice of intention to cancel is given, the Lessor and its agents, employees and tenants may enter the apartment, occupy the same, and make such alterations, additions and repairs therein as the Lessor may deem necessary or desirable without diminution or abatement of the rent due hereunder.

Cancellation
of Lease

Rights on
Lessee's
Default

FIFTH: If the Lessee shall have done the things and made the payments at the times, in the amounts and in the manner required by this Article IV, then upon the 31st day of May named in the notice of intention to cancel as the date for the cancellation of this lease, this lease shall be cancelled and all rights, duties and obligations of the parties hereunder shall cease, terminate and expire as of said 31st day of May, and said shares of stock of 94th Street and Fifth Avenue Corporation shall become the absolute property of the Lessor, *provided*, *however*, that the Lessee shall not be released or discharged from any indebtedness owing from the Lessee to the Lessor on said last mentioned date, and *provided further*, that if the Lessee shall fail to do any of the things or make any of the payments at the times, in the amounts and in the manner required by this Article IV, the Lessor shall have the option (1) of returning to the Lessee this lease, the certificate of stock and other documents deposited, and the sums paid by the Lessee under this Article IV, other than any sum paid as rent under this lease or as the cost of repairing any damage resulting from the removal by the Lessee of additions, improvements or fixtures, and thereupon the Lessee shall be deemed to have withdrawn the notice of intention to cancel this lease, or (2) of treating this lease as cancelled as of the 31st day of May named in the notice of intention to cancel as the date for the cancellation of such lease, and bringing such proceedings and actions as it deems best to enforce the covenants of the Lessee in this Article IV contained and to collect from the Lessee the payments which the Lessee is required to make under this Article IV, together with reasonable counsel fees and costs.

ARTICLE V

IT IS FURTHER MUTUALLY AGREED AS FOLLOWS:

Transfer
of Stock

FIRST: The shares of stock of the Lessor held by the Lessee and allocated to the apartment have been acquired and are owned subject to the following conditions agreed upon with the Lessor and with each of the other proprietary lessees for their mutual benefit:

(1) The shares represented by each certificate are transferable only as an entirety;

31 A

19

(2) Neither the Lessee nor the Lessee's personal representatives shall sell or transfer said shares except to the Lessor, or to an assignee of this lease after compliance with all of the provisions of paragraph SIXTH of Article II of this lease relating to assignments.

SECOND: All proprietary leases of apartments in the building hereafter executed shall be in the form of this lease except with respect to statements as to number of shares of stock owned by Lessee and proposed use and occupancy by Lessee. The Lessor will not make or consent to any change or alteration in the terms or conditions of any proprietary lease which shall have been executed by the Lessor (as distinct from the house rules) unless such change or alteration shall be made pursuant to the affirmative vote taken at a meeting called for that purpose by lessees owning at least two-thirds in amount of the Lessor's capital stock then owned by all lessees under proprietary leases then in force and effect.

Changes in
Terms and
Conditions of
Proprietary
Leases

THIRD: The references herein to the Lessor shall be deemed to include its successors and assigns, and the references herein to the Lessee or to a stockholder of the Lessor shall be deemed to include the executors, administrators, legal representatives, legatees, distributees and assigns of the Lessee or of such stockholder; and the covenants herein contained shall apply to, bind and enure to the benefit of the Lessor and its successors and assigns, and the Lessee and the executors and administrators, legal representatives, legatees and assigns of the Lessee, except as hereinbefore stated.

To Whom
Covenants
Apply

FOURTH: It is mutually agreed by and between Lessor and Lessee that the respective parties hereto shall and they hereby do waive trial by jury to any action, proceeding or counterclaim brought by either of the parties hereto against the other on any matters whatsoever arising out of or in any way connected with this lease, the Lessee's use or occupancy of the demised premises, or any claim of damage resulting from any act or omission of the parties in any way connected with this lease or the demised premises.

Waiver
of Trial
by Jury

FIFTH: The marginal headings of the several paragraphs of this lease shall not be deemed a part of this lease.

Marginal
Headings

IN WITNESS WHEREOF, the Lessor has caused its corporate seal to be hereto affixed and this instrument to be signed by its President,

32 A

20

and the Lessee has executed this instrument under seal, the day and year first above written.

94TH STREET AND FIFTH AVENUE CORPORATION

Lessor.

By *W. W. Wymen*

President.

Stephen S. Finaro (L. S.)
Lessee.

Witness:

W. W. Wymen
As to Lessee.

STATE OF NEW YORK, }
COUNTY OF NEW YORK, } ss.:

On the 12 day of January, in the year 1968, before me personally appeared CHARLES A. WYMAN, to me known, who being by me duly sworn, did depose and say that he resides at 1125 Fifth Avenue; that he is the President of 94TH STREET AND FIFTH AVENUE CORPORATION, the corporation described in and which executed the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that he signed his name thereto by like order.

Christina Hunter

CHRISTINA HUNTER
Notary Public for the State of New York
No. 123456789
County of New York
Clerk of the County of New York
Commenced March 30, 1969

33 A

21

STATE OF NEW YORK, }
COUNTY OF NEW YORK, } ss.:

On the 15th day of January, in the year 1968, before me personally appeared STEPHEN S. GIRARD, to me personally known and known to me to be the individual described in and who executed the foregoing instrument, and duly acknowledged to me that he executed the same.

Handwritten signature of Stephen S. Girard
Notary Public
State of New York
JAN 15 1968

Exhibit B Annexed to Complaint
Agreement

AGREEMENT made this 3rd day of ~~January~~ ^{May}, 1973, *SG*

by and between STEPHEN GIRARD (hereinafter referred to as the "Husband") and BARBARA GIRARD (hereinafter referred to as the "Wife").

W I T N E S S E T H:

WHEREAS, the parties were married on the 20th day of July, 1963, in the City and State of New York, and ever since that time have been and now are Husband and Wife; and

WHEREAS, there has been issue of the marriage, to wit: NICOLE GIRARD, born on the 25th day of July, 1966 (hereinafter referred to as the "Child"); and

WHEREAS, in consequence of disputes and irreconcilable differences, the parties have heretofore separated and are now living separate and apart; and

WHEREAS, the parties are desirous of confirming their separation and making arrangements in connection therewith and desire that this Agreement which is entered into after due and considered deliberation shall be and constitute an agreement of separation between them with respect to the settlement of their respective property rights, the support,

maintenance and education of the Child and as to all other rights and obligations arising from said marriage relationship.

NOW, THEREFORE, in consideration of the mutual promises and covenants hereinafter set forth, the parties agree as follows:

1. The parties shall continue to live separate and apart. Each shall be free from interference and control, direct or indirect, by the other, as fully as though unmarried. Each may reside at such place or places as he or she may elect and may, for his or her separate use and benefit, engage in any employment, business or profession which he or she may choose.

2. The parties shall not molest or interfere with each other, nor shall either of them compel or attempt to compel the other to cohabit or dwell with him or her, by any means whatsoever.

3. In consideration of the Wife waiving any and all rights to the receipt of alimony, the Husband agrees, upon the execution of this Agreement:

(a) to transfer to her the complete ownership

36 A

title and control in and to the marital residence known as 1125 Fifth Avenue, New York, New York, by transferring to her 497 shares of the Capital Stock of 94th Street and Fifth Avenue Corporation, which stock carries with it the title and ownership of said residence, and the privilege of receiving the proprietary lease, dated January 10, 1968, which lease shall be assigned to the Wife and delivered to her or her attorney upon the execution of this Agreement, and

(b) The Husband releases and relinquishes all of his right, title and interest in and to all the furniture, furnishings, household goods and appliances; fixtures and appurtenances, books and works of art, and other items of personal property located in the marital residence known as 1125 Fifth Avenue, New York, except the Husband's articles of personal effects, such as athletic trophies and items of personal clothing and jewelry.

4. The Husband shall, during his lifetime, pay to the Wife for the support, maintenance and education of the Child, the sum of \$500.00 per month, in advance, commencing with the 1st day of ~~January~~, 1973, until such time as the

MAY

37A

Child marries, attains the age of twenty-one years, becomes emancipated or dies, whichever event first occurs.

5. In addition thereto, the Husband further agrees to pay for any extraordinary medical or dental expenses for the Child, but in the event of such extraordinary medical or dental expense, the Wife shall first consult with the Husband in the selection of a physician and obtain his consent thereto, which consent the Husband agrees not to unreasonably withhold. In the event of an emergency, the Husband's consent need not be obtained.

6. The Wife shall have custody of the Child, subject to the following rights of visitation by the Husband:

(a) The Husband shall have the right to have the Child with him, away from the home of the Wife, for two full weekends in each month, commencing at 6:00 P.M. on Friday to 8:00 P.M. on Sunday.

(b) For two evenings a week, away from the home of the Wife, during the weeks in which the Husband does not have his weekend visitation rights as hereinabove provided from 5:00 P.M. to 8:00 P.M. The Husband shall notify the Wife forty-eight (48) hours in advance of the evenings in which he desires to have the child with him.

(c) For the month of August, each year, away from the home of the Wife.

(d) Alternating Christmas and Easter Holidays, away from the home of the Wife, commencing with Easter, 1973.

7. If for any reason the Husband does not desire or is unable to exercise his rights of visitation, as hereinabove provided, he shall so notify the Wife forty-eight (48) hours in advance of the time provided for his weekend rights of visitation; twenty-four (24) hours in advance of his daily visitation rights and two weeks in advance of the longer periods provided for herein.

8. Nothing herein contained shall be construed as an obligation or duty on the part of the Husband to accept custody and exercise his visitation rights with respect to the Child at the time and for the periods herein indicated. If the Husband cannot exercise his rights hereunder for any reason whatsoever, it shall not be deemed that he has waived any or all such rights or future rights.

9. The Wife and the Husband are presently living in the City of London located in the United Kingdom. If, for any reason, either of them changes his or her residence to another country, then the Husband's rights of visitation shall be as follows:

(a) For the month of August, each year, and for which is to be mutually agreed upon by Husband and Wife one additional month/during the winter, each year, away from the home of the Wife;

39 A

(b) For the Christmas and Easter vacations, away from the home of the Wife;

(c) For a maximum of six (6) days in any one month, away from the home of the Wife, if the Husband visits the country in which the Wife is residing. However, the Husband agrees that he must give the Wife fourteen (14) days' notice of his arrival. Any and all visitation with the child, pursuant to this agreement, exercised by the Father, shall require the Father's presence with the child at all times or the presence of an immediate member of his family.

10. In the event of any serious illness of the Child, the Wife shall advise the Husband with respect to said illness and afford the Husband a reasonable opportunity to visit the Child during the period of such illness. In the event of any serious illness of the Child while with the Husband, the Husband shall advise the Wife with respect to said illness and afford the Wife a reasonable opportunity to visit the Child during the period of such illness. A serious illness is one which confines the Child to bed for more than a three day period.

11. Except as herein otherwise provided, the Wife represents and warrants that she has not heretofore incurred or contracted, and covenants that she will not at any time hereafter incur or contract any debt, charge or liability whatsoever for which the Husband, his legal representatives or his estate shall be or may become liable.

12. Except as herein to the contrary specifically provided and except for any cause of action for divorce, the parties mutually remise, release and forever discharge each other from any and all actions, suits, debts, claims, demands and obligations whatsoever, both in law and in equity, which either of them ever had, now has, or may hereafter have against the other upon or by reason of any matter, cause or thing up to the date of the execution of this Agreement, it being the intention of the parties that henceforth there shall be, as between them, only such rights and obligations as are specifically provided in this Agreement.

13. (a) The parties have heretofore filed joint federal and New York State and New York City income tax returns. The Husband represents and warrants to the Wife that he has heretofore paid all taxes due on such returns; that he does not owe any interest or penalties with respect to such returns; and that no tax deficiency proceeding is pending or threatened against him thereon. If the Husband shall file any amended income tax return or any amended federal gift tax return, if any, or claim for tax refund for any year that the parties filed a joint or combined income tax return, and if the Wife shall fail or refuse, within 30 days after request by notice, to sign any such amended return or refund claim, the Husband is authorized for the Wife and in her name, place and stead,

to execute and file the amended tax return or refund claim.

(b) The Wife agrees to cooperate with the Husband to the extent lawfully permitted in respect of any and all controversies as to the amount of such taxes, including the contest of any such taxes in dispute, claims for deficiency thereof on the part of any government, claims for refund on the part of the parties hereto, litigation pertaining thereto, and shall, upon the Husband's request, promptly deliver to him or his counsel, all data in her possession or subject to her control necessary, appropriate or desirable in the opinion of counsel to the Husband in the defense of such claims for defense or his prosecution of any such claims for refund. In the case of any refunds of such taxes, the Wife agrees that the proceeds of such refunds shall be the sole, separate property of the Husband and that she will promptly endorse to the order of the Husband all checks for refunds; execute and deliver such other documents as may be appropriate to vest such proceeds in the Husband and in all other respects will join in the execution of all other documents, bills of complaint, settlement agreements and other papers which the Husband may lawfully request pertaining to such income tax and gift tax matters.

(c) In case of any deficiency for federal, state or city income taxes, under any returns filed jointly by the

Husband and Wife or any sole act of the Husband, the Husband shall be solely liable for the same, as well as any interest or penalties that may be imposed upon such deficiency; the Husband shall indemnify and hold the Wife harmless for such assessments, interest and/or penalties and the Husband shall promptly reimburse the Wife therefor.

14. The parties acknowledge and represent that the sum of Forty Thousand (\$40,000.00) Dollars was loaned to them by Mr. Cy Girard, the father of the Husband, and said sum was used towards the purchase of the marital residence and furnishings contained therein. The Wife agrees that upon the sale or contingencies hereinafter more specifically set forth in relation to the marital residence and furnishings contained therein, that from the first monies received, she shall pay to the Husband the first monies received up to the sum of Forty Thousand (\$40,000.00) Dollars without interest thereon, which sums the Husband agrees to hold in a special trust account for the benefit of the Child, for educational and emergency contingencies, as the Husband, in his sole discretion, shall determine.

(a) The Wife agrees that she shall not borrow

43 A

against, pledge, dispose of, or otherwise encumber the shares of stock of the marital residence and the personal property located therein except by a bona fide sale, and when same is sold, she shall pay to the Husband the first monies received up to the sum of Forty Thousand (\$40,000.00) Dollars, without interest, from the proceeds of any sale, which sum the Husband agrees to place in a special trust account for the Child as hereinabove set forth.

(b) The Wife further agrees that in the event she, by subletting or assignment, derives income from the marital residence and/or the furnishings contained therein, that she shall, after the payment of the monthly maintenance for the apartment, pay any and all additional sums received to the Husband, up to the sum of Forty Thousand (\$40,000.00) Dollars, which sums the Husband agrees to place in a special trust account for the Child, as hereinabove set forth. Upon said delivery of the Forty Thousand (\$40,000.00) Dollars to the Husband, Mr. Cy Girard agrees to deliver his release to the Wife for any and all sums that might be due him.

82
629
(c) In the event the parties are divorced and the Wife remarries, and the Wife thereafter resides in said apartment for any period in excess of six months then and in that event, the Wife will either pay and deliver to the Husband the sum of Forty Thousand (\$40,000.00) Dollars to be

44 A

placed by the Husband in trust for the Child as hereinabove set forth, or the Wife shall transfer ownership of the apartment back to the Husband.

15. The parties acknowledge and represent that Mr. Martin Gutmacher, the father of the Wife, loaned to them the sum of approximately Sixteen Thousand (\$16,000.00) Dollars, which sum was used to purchase securities known as City Investing Company. Both parties acknowledge that the stock is in the possession of Mr. Martin Gutmacher, and upon the execution of this Agreement, the Husband shall deliver his stock power to Martin Gutmacher and Martin and Rose Gutmacher will deliver their general releases to the Husband.

16. The Husband hereby releases and indemnifies the Wife from any and all obligations in and to any loans which have been secured from the sister of the Husband and personal mutual friends.

17. The Husband shall have the right to claim the Child as a dependent on the filing of his income tax returns.

18. It is expressly agreed and understood that the Wife shall do nothing to cause the Child to be known by or use any other names for any purpose whatsoever than the name she presently has and as it appears herein.

19. In the event that the Husband defaults with

respect to any payment of allowance or with respect to any other obligation under this Agreement, and said default is not remedied within thirty days after the sending of a written notice by registered mail to the Husband specifying said default, the Husband shall be liable and responsible to pay to the Wife such reasonable attorneys' fees and disbursements which the Wife may incur in enforcing this Agreement and effectuating payment. The Husband agrees that the Wife may, in a single action, sue for any payments in default and the amount of said attorneys' fees and disbursements.

20. In the event that either party hereto shall at any time bring an action for divorce against the other in any state, territory or possession in the United States of America, or in any foreign country, this Agreement shall be presented to the Court upon the trial or hearing of such action so that the terms and provisions thereof may be made known to and approved by the Court, and the parties agree that if a final decree or judgment of divorce is rendered in favor of the plaintiff in such action, the same shall not affect, discharge, limit or enlarge the obligations of either of the parties hereto, and such Agreement shall be incorporated into the decree or judgment of such Court. Notwithstanding any such incorporation and the rights which may accrue thereby, this Agreement shall survive the decree or judgment and continue in full force and effect.

21. The Husband and the Wife each hereby waives, relinquishes and renounces any and all right to share in the estate of the other after his or her death as the case may be, whether the one so dying takes testate or intestate. However, neither party waives the right to take a devise or legacy given under the will of the other. Each hereby waives and renounces any and all right to take against the will of the other conferred by the Estates, Powers and Trusts Law of New York or any like statute or enactment in any other state or jurisdiction except as set forth in this Agreement. The parties further agree and covenant that each will permit any will or testament of the other to be duly probated and will also allow letters testamentary or letters of administration, as the case may be, to be taken or received by such person or persons as would be entitled thereto had the survivor of them predeceased the one first dying.

22. Each party shall, at any time, and from time to time hereafter, take any and all steps and execute, acknowledge and deliver to the other party any and all instruments and assurances that the other party may reasonably require or find convenient, expedient or business-like for the purpose of giving full force and effect to the provisions of this Agreement.

23. Both parties agree that in the event there are any monies to be paid to either the Husband and ^{the} Wife as a result of their joint Astrological business venture, said monies shall be equally divided between the Husband and the Wife. It was always the intention of both the Husband and the Wife to share in the profits of said joint venture.

24. Each party hereto acknowledges that each of them is making this Agreement of his or her own free will and volition, and acknowledges that no coercion, force, pressure, fraud, or undue influence has been used against either party in the making of this agreement, either by the other party to this Agreement or by any other person or persons.

25. The parties hereto declare that they have read this Agreement; that the Wife has independent legal advice by counsel of her own selection, to wit: William London, Esq., and that the effect, legal, financial and practical of this Agreement, in each and every respect, has been fully and fairly explained to the Wife by such counsel so chosen by her. The Wife acknowledges that she is fully familiar with the condition and prospects of the Husband and each of the parties acknowledges that no representations have been made to induce either of them to sign this Agreement and each of the parties hereto expressly acknowledges to the other that it is a fair agreement, freely made by them and that they have incorporated herein their entire agreement and nothing extrinsic to this Agreement shall have any force or effect whatsoever.

The Wife expressly recognizes and acknowledges that the provisions herein contained for her benefit are acceptable, satisfactory, reasonable and adequate.

26. In the event the Husband and Wife are residing in the same country and if the Husband has remarried, then and in that event, if the Wife leaves said country on vacation for more than seven consecutive days, the Child, if not taken by the Wife on said vacation, shall spend said vacation time with the Husband for the period that the Wife is out of the country.

27. The Wife agrees and undertakes to assume all liabilities with reference to the maintenance and costs of the marital residence located at 1125 Fifth Avenue, New York City, past, present and future, and agrees to indemnify and hold the Husband harmless from any and all claims for said maintenance or costs of running said apartment, past, present and future.

28. This Agreement shall be construed in accordance with the laws of the State of New York, entirely independent of the forum where it may come up for construction or enforcement. If a court of competent jurisdiction holds a portion of this Agreement invalid, the remainder shall not be affected thereby and shall continue in full force and effect.

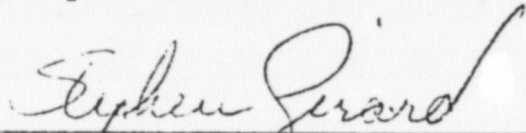
29. Upon the execution of this Agreement, the Husband shall pay to William London, Esq., the attorney representing the Wife herein, the sum of \$2,500.00, which sum shall be in full payment, settlement and satisfaction of his services on

behalf of the Wife and in complete release of any and all claims the Wife may have for counsel fees.

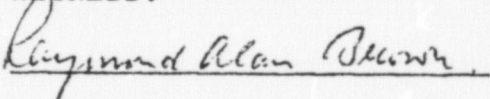
30. This Agreement and all of the provisions hereunder shall inure to the benefit of and shall be binding upon the parties, their heirs, executors, administrators, personal representatives and assigns.


31. No modification, rescission or amendment to this Agreement shall be effective unless in writing and signed by the parties hereto.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals the day and year hereinabove written.

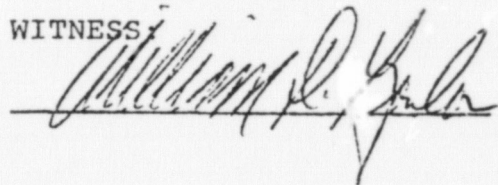

Stephen Girard

WITNESS:


Raymond Alan Brown


Barbara Girard

WITNESS:

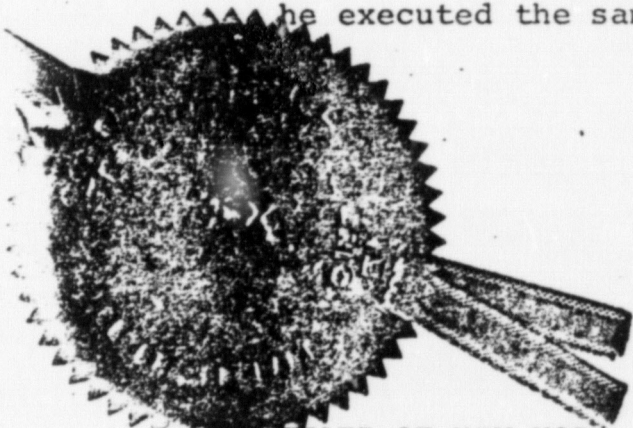

William L. Galt

51 A

STATE OF NEW YORK)
COUNTY OF)

SS.: *Notary Public and Notary Public*

On the ~~third~~ ^{1st} day of ~~January~~ ^{April}, 1973, before me *m*
personally came STEPHEN GIRARD, to me known and known
to me to be the individual described in and who executed
the foregoing instrument and acknowledged to me that
he executed the same.



John D. Mollen
JOHN D. MOLLEN
Vice President
of America

STATE OF NEW YORK)
COUNTY OF *New York*)

SS.:

On the ~~25th~~ ^{25th} day of ~~January~~ ^{April}, 1973, before me
personally came BARBARA GIRARD, to me known and known
to me to be the individual described in and who executed
the foregoing instrument and acknowledged to me that
she executed the same.

WILLIAM D. LONDON
Notary Public, State of New York
Qual. in N.Y. Co. No. 31-7589940
Term Expires March 30, 1974

William D. London

Exhibit C Annexed to Complaint
Judgment of Divorce

At a Trial Term, Part V-A of the
 Supreme Court of the State of
 New York, held in the County of
 New York located at 60 Centre
 Street, City of New York, on the
 10th day of October, 1973.

PRESENT:

HON. Gerald Mazur

Special Referee

BARBARA GIRARD,	:	
Plaintiff,	:	<u>JUDGMENT OF DIVORCE</u>
-against-	:	Index # 33516/73
STEPHEN GIRARD,	:	Cal. # U 34122
Defendant.	:	

The above entitled action, having been brought for a judgment of divorce in favor of the plaintiff against the defendant by reason of the cruel and inhuman treatment of the plaintiff by the defendant, the defendant having been duly served within the State of New York with a summons bearing the notation "ACTION FOR A DIVORCE", the defendant having appeared by Counsel's notice of appearance duly served and filed herein and the time to answer having expired, and this cause having been duly called on the UNDEFENDED MATRIMONIAL CALENDAR at Trial Term Part V-A of this court at the September 13, 1973 Term, the plaintiff by attorney having appeared and presented the Verified Complaint; the affidavit of regularity of this proceeding; the defendant not having appeared at the Inquest and testimony having been taken in open court on the 13th day of September, 1973, satisfactorily proving the allegations of the verified complaint; the court having heard and

53A

considered the proof offered and having made a decision in writing stating separately the facts found and the conclusions of law;

Now, on motion of William D. London, Esq., attorney for the plaintiff, it is

ORDERED, ADJUDGED AND DECREED that the plaintiff have judgment that the marriage heretofore existing between the plaintiff and the defendant be dissolved by reason of the cruel and inhuman treatment of the plaintiff by the defendant, and it is further

ORDERED, ADJUDGED AND DECREED that the separation agreement between the plaintiff and defendant dated May 3, 1973 be incorporated into this Judgment but not be merged herein, and It is further

~~ORDERED, ADJUDGED AND DECREED that from the date hereof the plaintiff shall have the custody of the infant issue of said marriage, Nicole Girard, and it is further~~

~~ORDERED, ADJUDGED AND DECREED that this decree may be enforced or modified only in the Supreme Court.~~

E N T E R

Ym
S.R.
ORDERED AND ADJUDGED THAT THE PLAINTIFF MAY RESUME
RESUMPTORY, TO WIT: *Christa Girard*

PLAINTIFF'S ADDRESS:

1125 Fifth Avenue
New York, New York

S. J. Girard
S.R.

S. Norman Goldman

FILED

OCT 16, 1973
CLERK'S OFFICE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X
BARBARA GIRARD,

Plaintiff,

-against-

STEPHEN GIRARD,

Defendant.
-----X

:
: FINDINGS OF FACT
: CONCLUSIONS OF LAW

: Index # 33516/73
: Cal. # 0 34122

FINDINGS OF FACT

FIRST: That jurisdiction as required by Section 230 of the Domestic Relations Law has been obtained.

SECOND: That plaintiff and defendant were married on July 20, 1963 in the City and State of New York.

THIRD: That there is one issue of this marriage, VIZ., Nicole, age 7 years.

FOURTH: That on or about August 1, 1971 and September 1, 1971, defendant struck the plaintiff.

FIFTH: That the conduct of the defendant towards the plaintiff has so endangered the physical or mental well being of the plaintiff as to render it unsafe or improper for the plaintiff to cohabit with the defendant.

CONCLUSIONS OF LAW

FIRST: That the plaintiff, Barbara Girard, is entitled to a judgment against the defendant, Stephen Girard, dissolving the marriage relation heretofore existing between the parties hereto, by reason of the cruel and inhuman treatment of the plaintiff by the defendant.

SECOND: That the plaintiff be awarded sole custody of the infant issue of the marriage of the parties, VIZ: Nicole age 7 years.

55A

I direct that judgment be entered accordingly.

Dated: New York, New York
October 4, 1973

G.M.
Justice of the Supreme Court

Notice of Motion to Dismiss Complaint

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MEMO. ENDORSED

-----X
BARBARA GIRARD,

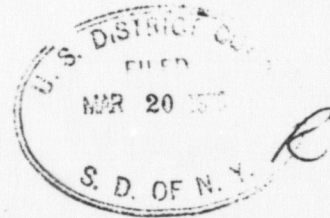
Plaintiff,

-against-

94TH STREET AND FIFTH AVENUE
CORPORATION, LAWRENCE WILKINSON,
JOHN H. STOOKEY and THOMAS E. MURRAY,

Defendants.
-----X

:
:
:
: 75 Civ. 646(RJW)
:
: NOTICE OF MOTION
: TO DISMISS COMPLAINT



S I R S:

PLEASE TAKE NOTICE that upon the annexed affidavit of Martin I. Shelton, sworn to on March 18, 1975, the exhibits thereto annexed and the complaint herein, the undersigned will move this Court, at the United States Court House, Foley Square, New York, New York, Room 906, on the 1st day of April, 1975, at 2:15 P.M., or as soon thereafter as counsel can be heard, for an order pursuant to Rule 12(b) of the Federal Rules of Civil Procedure dismissing the action on the ground that the complaint fails to state a claim upon which relief can be granted, or in the alternative granting summary judgment to defendants pursuant to Rule 56 of the Federal Rules of Civil Procedure, together with such other and further relief as to the Court may seem just and proper.

Dated: New York, New York
March 18, 1975

Yours, etc.

SHEA GOULD CLIMENKO KRAMER & CISEY

By

Mart I. Shelton
A Member of the Firm
Attorneys for Defendants
330 Madison Avenue
New York, New York 10017

TO: BALLON, STOLL & ITZLER, ESQS.
Attorneys for Plaintiff
1180 Avenue of the Americas
New York, New York 10036

Statement Pursuant to General Rule 9(g)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
BARBARA GIRARD, :
 :
Plaintiff, : 75 Civ. 646 (RJW)
 :
-against- :
 :
94TH STREET AND FIFTH AVENUE :
CORPORATION, LAWRENCE WILKINSON, :
JOHN H. STOOKEY and THOMAS E. MURRAY, :
 :
Defendants. :
-----X

STATEMENT PURSUANT TO
GENERAL RULE 9(g)

Defendants contend that there is no genuine issue as to the following material facts:

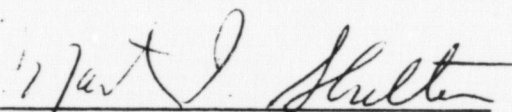
1. Plaintiff herein brought an action against defendant 94th Street and Fifth Avenue Corporation in the Supreme Court of the State of New York, County of New York, on or about August 14, 1973.
2. Copies of the pleadings in that action are annexed to the affidavit of Martin I. Shelton as Exhibits A and B.
3. A copy of the Supreme Court, County of New York opinion in that action is annexed to the affidavit of Martin I. Shelton as Exhibit C.
4. A copy of the judgment of the Supreme Court, County of New York is annexed to the affidavit of Martin I. Shelton as Exhibit D.
5. Plaintiff appealed from said judgment to the Supreme Court, Appellate Division, First Judicial Department and the judgment appealed from was unanimously affirmed by order dated November 26, 1974.

58A

6. Plaintiff subsequently sought leave to appeal to the Court of Appeals of the State of New York and said motion was denied by order of said Court on January 9, 1975.

Dated: New York, New York
March 18, 1975

SHEA GOULD CLIMENKO KRAMER & CASEY

By 
Member of the Firm
Attorneys for Defendants
330 Madison Avenue
New York, New York 10017

Affidavit of Martin I. Shelton in Support of Motion

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
BARBARA GIRARD,

Plaintiff,

-against-

94TH STREET AND FIFTH AVENUE
CORPORATION, LAWRENCE WILKINSON,
JOHN H. STOOKEY and THOMAS E. MURRAY,

Defendants.

:

:

:

:

:

:

75 Civ. 646 (RJW)

AFFIDAVIT

-----X

STATE OF NEW YORK)

: ss.:

COUNTY OF NEW YORK)

MARTIN I. SHELTON, being duly sworn, deposes and says;

1. I am a member of the firm of Shea Gould Climenko
Kramer & Casey, attorneys for defendants and submit this
affidavit in support of the within motion.

2. On or about August 14, 1973, plaintiff commenced
an action against 94th Street and Fifth Avenue Corporation, one
of the defendants herein. A copy of the summons and complaint
is annexed hereto as Exhibit A. A copy of the answer to said
complaint is annexed hereto as Exhibit B.

3. Plaintiff herein subsequently moved in that action
to remove a hold over proceeding which defendant 94th Street
and Fifth Avenue Corporation had brought in the Civil Court of
the State of New York, County of New York, in which plaintiff
herein was named as an undertenant, and to consolidate said
action with the action described in Paragraph 2 hereof. Defendant
94th Street and Fifth Avenue Corporation cross-moved for summary

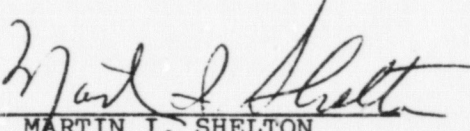
judgment and these motions came on to be heard in the Supreme Court of the State of New York, County of New York.

4. On July 8, 1974, the Court granted the motion for summary judgment and denied the motion for removal and consolidation. A copy of the court's decision is annexed hereto as Exhibit C. Subsequently, a judgment was entered in said action, a copy of which is annexed hereto as Exhibit D.

5. Plaintiff herein appealed from the judgment to the Appellate Division, First Judicial Department and by order dated November 26, 1974, the judgment appealed from was unanimously affirmed. Plaintiff subsequently sought leave to appeal from said affirmance to the Court of Appeals of the State of New York and said motion was denied by order of said court on January 9, 1975.

6. The hold-over proceeding is still pending in the Civil Court of the State of New York, County of New York, and is scheduled for trial on March 26, 1975. Plaintiff herein has made a motion in that action seeking to stay the trial thereof because of the institution of this action in this court.

7. Your deponent respectfully submits that the action in this court should be dismissed on well established principles of res judicata.


MARTIN I. SHELTON

Sworn to before me this
18th day of March, 1975.

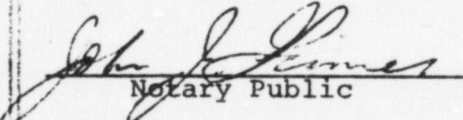

Notary Public

Exhibit A Annexed to Affidavit of Martin I. Shelton

Summons

EXHIBIT A - SUMMONS AND COMPLAINT IN SUPREME COURT
ACTION

26

C 104—Summons without Notice, Blank Court. 9-71
Personal Service.COPYRIGHT 1971 BY JULIUS BLUMBERG, INC., LAW BOOK PUBLISHERS
80 EXCHANGE PLACE AT BROADWAY, NEW YORKSUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

BARBARA GIRARD,

Plaintiff

against

94th STREET AND FIFTH AVENUE
CORPORATION,

Defendant

Index No.

Plaintiff designates

New York
County as the place of trialThe basis of the venue is
Defendant's principal
place of business

Summons

Plaintiff resides at

1125 Fifth Avenue

County of New York

To the above named Defendant

You are hereby summoned to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the Plaintiff's Attorney(s) within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated,

New York, New York
August 14, 1973WILLIAM D. LONDON
Attorney(s) for Plaintiff

Office and Post Office Address

545 Fifth Avenue
New York, N.Y. 10017

Exhibit A Annexed to Affidavit of Martin I. Shelton
Complaint

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X

BARBARA GIRARD,	:	
	:	
Plaintiff,	:	
	:	
-against-	:	<u>COMPLAINT</u>
94th STREET AND FIFTH AVENUE CORP.,	:	Index No.
	:	
Defendant.	:	

-----X

Plaintiff, by her attorney, William D. London, as
and for her complaint against the defendant, alleges:

FIRST: Plaintiff is, and at all times hereinafter
mentioned, a resident of New York County, New York.

SECOND: Upon information and belief, that at all
times herein mentioned, defendant was and still is a domestic
corporation organized under and by virtue of the laws of the
State of New York.

THIRD: That on or about the 10th day of January,
1968, plaintiff's husband, Stephen S. Girard, purchased 497
shares of the capital stock of defendant corporation (attached
hereto as Exhibit "A"). The purchase of said stock by plain-
tiff's husband entitled plaintiff's husband to receive the
proprietary lease (attached hereto as Exhibit "B") relating to
said apartment.

FOURTH: That on or about the 10th day of January,
1968, plaintiff, her husband and their child moved into the
aforementioned apartment which as of said date, became plain-
tiff's marital residence.

Action

FIFTH: That on the 3rd day of May, 1973, plaintiff and her husband, Stephen S. Girard, entered into a separation agreement. Pursuant to paragraph 3(a) of the separation agreement, plaintiff's husband transferred to plaintiff the complete ownership title and control in and to the 497 shares of the capital stock of defendant corporation. Said transfer of stock carries with it the privilege of receiving the proprietary lease relating to said apartment.

SIXTH: That on the 30th day of July, 1973, plaintiff instructed her attorney to demand that the 497 shares of the capital stock of defendant corporation be transferred from Stephen Girard to plaintiff and that said transfer be registered on the books of defendant corporation. A copy of plaintiff's attorney's letter addressed to defendant is attached hereto as Exhibit "C".

SEVENTH: That on or about the 8th day of August, 1973, plaintiff's attorney received a letter from defendant's attorney. Said letter stated that the Board of Directors of defendant corporation had unanimously rejected plaintiff's demand to transfer the 497 shares of the capital stock of defendant corporation from plaintiff's husband, Stephen Girard to his wife, Barbara Girard. A copy of said letter is attached hereto as Exhibit "D". Said letter offers no reason for the defendant corporation's rejection of the requested transfer of stock from plaintiff's husband to plaintiff. The rejection by defendant corporation to transfer the aforesaid stock is an arbitrary, capricious and unreasonable determination that will prejudice plaintiff by having the effect of depriving plaintiff of her ownership of the marital residence. Plaintiff accepted

Exhibit A - Summons and Complaint in Supreme Court
Action

29

the transfer of the aforementioned stock in lieu of all her rights to receive alimony from her husband. /

EIGHTH: That defendant corporation's refusal to transfer as of record on the books of defendant corporation the aforementioned stock to plaintiff and its refusal to consent to the assignment of the proprietary lease to plaintiff is a plan by defendant corporation that is intended to deprive plaintiff of the ownership of said stock and the benefits which derive therefrom.

NINTH: That the acts of the Board of Directors of defendant corporation in arbitrarily refusing to transfer the aforesaid stock as of record on the books of defendant corporation from plaintiff's husband to plaintiff is a breach of the proprietary lease agreement and the representations relating to the transfer of the stock contained therein which was entered into between the plaintiff's husband and defendant on January 10, 1968. Said acts of the Board of Directors of defendant corporation have placed plaintiff in jeopardy of losing a substantial asset that was given to plaintiff from her husband on May 3, 1973 in consideration of plaintiff waiving all of her rights to receive alimony from her husband.

TENTH: That the present market value of the subject cooperative apartment, together with the improvements made by plaintiff and her husband is in excess of \$300,000.00 and unless defendant corporation transfers the aforementioned stock as of record on the books of defendant corporation and consents to the assignment of the proprietary lease of the subject apartment, plaintiff will suffer irreparable harm by the loss of an asset

ELEVENTH: That there is no reason at law for defendant corporation's refusal to transfer the aforementioned stock and consent to the assignment of the proprietary lease from plaintiff's husband to plaintiff.

WHEREFORE, plaintiff requests the court to declare the legal rights, relations and duties of the parties with respect to the following matters:

(a) that defendant corporation's refusal to transfer the stock of defendant corporation from Stephen S. Girard to Barbara Girard is arbitrary, capricious and unreasonable;

(b) that defendant corporation's refusal to consent to the assignment of the proprietary lease of the subject apartment is arbitrary, capricious and unreasonable; and

(c) that defendant has no right or power to
(1) reject plaintiff's justified demand to transfer the 497 shares of the capital stock of defendant corporation from Stephen S. Girard to Barbara Girard; and

(2) refuse to consent to the assignment of the proprietary lease of the subject apartment from Stephen S. Girard to Barbara Girard;

(d) That defendant corporation transfer as of record on the books of defendant corporation the 497 shares of the capital stock of defendant corporation; and

(e) That defendant corporation consent to the assignment of the proprietary lease from Stephen S. Girard to Barbara Girard relating to the fourth floor apartment located at 1125 Fifth Avenue, New York, New York.

Exhibit A - Summons and Complaint In Supreme Court
Action

and for such other and further relief as the Court may deem just and proper, together with the costs and disbursements of this action.

WILLIAM D. LONDON
Attorney for Plaintiff
545 Fifth Avenue
New York, N.Y. 10017
(212) 972-9335

51

INCORPORATED UNDER THE LAWS OF THE STATE OF NEW YORK

94TH STREET AND FIFTH AVENUE CORPORATION

Authorized to be issued 8,000 Shares — Par Value \$1.00 Each

THIS IS TO CERTIFY that

STEPHEN S. GIRARD

FOUR HUNDRED NINETY-SEVEN

Shares of the Capital Stock, par value \$1.00 each, of the 94TH STREET AND FIFTH AVENUE CORPORATION, (subject to certain restrictions referred to herein) transferable only on the books of the corporation by the holder hereof in person or by duly authorized attorney upon surrender of this certificate properly endorsed.

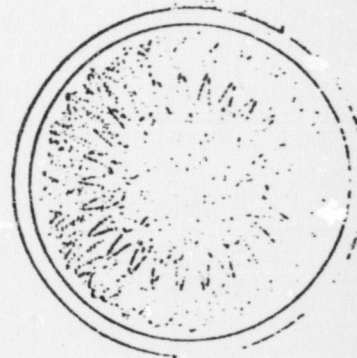
The sale or transfer of shares of stock to any person at any time is subject to the following restrictions and conditions.

The shares represented by this certificate are transferable only as an entirety. Neither the holder hereof nor his personal representatives shall sell or transfer the shares of stock represented hereby except to the corporation or to an assignee of the proprietary lease issued in connection with this certificate after compliance with all the provisions of said proprietary lease relating to assignments.

IN WITNESS WHEREOF, the said corporation has caused this certificate to be signed by its duly authorized officers and the corporate seal to be hereto affixed this 15th day of January A. D. 1968.

to be hereto affixed this 15th day of January A. D. 1968.

SECRETARY-TREASURER



68 A

Exhibit B Annexed to Complaint
Proprietary Lease

Shown herein on pages 12A to 33A

30 July, 1973

94th Street and Fifth Avenue Corporation
1125 Fifth Avenue
New York, N.Y.

Re: 4th floor apartment located
1125 Fifth Avenue -
Stephen S. Girard

Gentlemen:

I represent Mrs. Barbara Girard who resides at 1125 Fifth Avenue, New York, N.Y. I am attorney-in-fact for said Barbara Girard in connection with the 497 shares of the capital stock of 94th Street and Fifth Avenue Corporation. Said stock carries with it the privilege of receiving the proprietary lease relating to said cooperative apartment.

On May 3, 1973, Mr. Stephen Girard and my client, Barbara Girard, entered into a separation agreement wherein Mrs. Girard became the owner of said 497 shares of the capital stock of the cooperative corporation. I am in possession of the duly executed stock certificate #51, duly endorsed to my client, Barbara Girard. At this time I demand that said stock be transferred from Stephen Girard to Barbara Girard and that said transfer be registered on the books of the corporation.

I expect your response to the aforementioned demand within 5 days from your receipt of this letter. If no response is forthcoming within said time period, I shall deem your lack of response tantamount to a refusal to meet the demand contained in this letter.

Very truly yours,

CERTIFIED MAIL
RRR

William D. London

cc: Albert Ashforth & Co.
12 East 44th Street
New York, N.Y.

bcc: Kenneth Kneigen, Esq.
Ballou, Stoll & Itzler
1490 Broadway

70A

EXHIBIT D - ANNEXED TO COMPLAINT - LETTER OF DEFENDANT'S
ATTORNEY

LAW OFFICES

M. S. & I. S. ISAACS

(FOUNDED 1870)

475 FIFTH AVENUE
NEW YORK, N. Y. 10017

CABLE ADDRESS
MISAACS NEW YORK

TELEPHONE
(212) OREGON 9-4747

LEWIS M. ISAACS, JR.
HERMAN J. JERVIS
DONALD L. NEWBORG
SEYMOUR S. SUSSMAN
PAUL M. GARTNER

August 7, 1973

William D. London, Esq.
545 Fifth Avenue
New York, N. Y. 10017

Re: 94th Street and Fifth Avenue Corp.
v. Stephen Girard
1125 Fifth Avenue
Fourth Floor Apartment

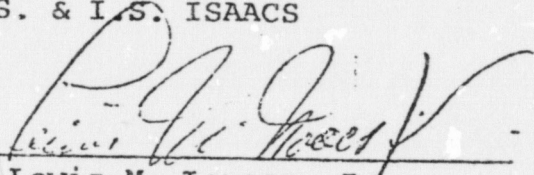
Dear Sir:

Your letter of July 30, 1973 referring to the above, addressed to 94th Street and Fifth Avenue Corporation, was referred to the Board of Directors of that corporation who, at a meeting held last night, unanimously rejected your demand that the stock owned by Stephen Girard be transferred of record to your client.

The directors also refused to consent to the assignment of the lease of the apartment as well as the shares to which said lease is appurtenant.

Very truly yours,

M.S. & I.S. ISAACS

By 
Lewis M. Isaacs, Jr.

LMI:RT

CC: Robert A. Wagner,
Albert Ashforth & Co.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----x
BARBARA GIRARD,

Plaintiff

-against-

94th STREET and FIFTH AVENUE
CORPORATION,

ANSWER

Defendant
-----x

Defendant, for its answer to the complaint herein, alleges:

1. Denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph FIRST.

2. Denies each and every allegation contained in paragraph FOURTH.

3. Denies knowledge or information sufficient to form a belief as to the allegation that plaintiff and Stephen S. Girard entered into a separation agreement, and on information and belief denies each and every other allegation contained in paragraph FIFTH.

4. Denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph SIXTH except admits receipt of plaintiff's attorney's letter dated July 30, 1973.

5. Denies each and every allegation contained in paragraph SEVENTH except admits that defendant's attorney sent a letter to plaintiff's attorney, dated August 7, 1973, a copy of which is annexed to the complaint

6. Denies each and every allegation contained in paragraph EIGHTH except admits that defendant refused to transfer the stock on its records and refused to consent to the assignment of the proprietary lease.

7. Denies each and every allegation contained in paragraphs NINTH, TENTH and ELEVENTH.

WHEREFORE, defendant demands judgment dismissing the complaint, together with the costs of this action.

Yours, etc.,

M.S. & I.S. ISAACS
Attorneys for Defendant
Office & P.O. Address
475 Fifth Avenue
New York, N.Y.

Telephone No. 679-4747

Exhibit C Annexed to Affidavit of Martin I. Shelton
Order and Judgment Appealed From

At a Special Term, Part I, of the
Supreme Court of the State of New York,
held in and for the County of New York,
at the Courthouse thereof, 60 Centre
Street, New York, New York, on the
29th day of July 1974.

P R E S E N T :

HON. SAMUEL A. SPIEGEL,

Justice. *MINUTE
FILED
JUL 27 1974*

----- x
BARBARA GIRARD,

Plaintiff,

Index No.
15173/73

-against-

ACTION NO. 1

94TH STREET AND FIFTH AVENUE
CORPORATION,

Defendant.

----- x
CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF NEW YORK

----- x
94TH STREET AND FIFTH AVENUE
CORPORATION, 1125 Fifth Avenue,
New York, New York 10028,

Petitioner
(Landlord)

Index No. L & T
22096/74

ACTION NO. 2

-against-

STEPHEN S. GIRARD
Fourth Floor Apartment
1125 Fifth Avenue
New York, New York 10028

Respondent
(Tenant)

EXHIBIT "C"

Order and Judgment Appealed From

BARBARA GIRARD
Fourth Floor Apartment
1125 Fifth Avenue
New York, New York 10028

Respondent
(Occupant-
Undertenant)

----- x

The plaintiff having moved this Court by Order to Show Cause dated March 22, 1974, for an order consolidating action No. 2 with action No. 1 and the defendant in action No. 1 and the petitioner in action No. 2 by Cross-Notice of Motion dated March 21, 1974, having moved for summary judgment in action Nos. 1 and No. 2 in the event the motion for consolidation was granted and for summary judgment in action No. 1 in the event said motion for consolidation was denied, and said motions having come on to be heard on March 29, 1974;

NOW, upon reading and filing the Order to Show Cause, ^{SIGNED BY HON. JUDGE} dated March 22, 1974, the affidavit of Kenneth S. Knigin, sworn to the 21st day of March, 1974, and the exhibits annexed thereto, in support of the Order to Show Cause; and the Notice of Cross-Motion dated March 21, 1974, and the affidavit of Robert A. Wagner, sworn to the 26th day of March, 1974, in support of said Cross-Motion and the affidavit of Martin I. Shelton, sworn to the 28th day of March, 1974, in further support of the Cross-Motion and in

Order and Judgment Appealed From

opposition to plaintiff's motion; and the affirmation of Kenneth S. Knigin, dated March 28, 1974, in opposition to defendant's Cross-Motion and in support of plaintiff's motion for consolidation; and Kenneth S. Knigin, Esq., having appeared in support of the plaintiff's motion and in opposition to defendant's Cross-Motion and Martin I. Shelton, Esq., having appeared in support of the Cross-Motion and in opposition to plaintiff's motion and due deliberation having been had thereon and the Court having rendered its decision,

NOW, on motion of SHEA GOULD CLIMENKO & KRAMER, attorneys for defendant in Action No. 1 and Trial Counsel for petitioner in Action No. 2, it is

ORDERED, that defendant's motion for a summary judgment in action No. 1 be and the same is in all respects granted; and it is further

ORDERED that plaintiff's motion for removal and the consolidation of action No. 2 with action No. 1 be, and the same is denied, as academic; and it is further

ORDERED that the stay contained in the order to show cause dated March 22, 1974 be, and the same hereby is vacated and set aside; and it is further

Order and Judgment Appealed From

ORDERED, ADJUDGED and DECREED, that the defendant have judgment against the plaintiff dismissing the complaint herein and that the rights of the parties are declared to be as follows:

1. That the defendant has the right or power to reject plaintiff's demand to transfer the 497 shares of capital stock of the defendant corporation from Stephen S. Girard to Barbara Girard and that the defendant has the right or power to refuse to consent to the assignment of the proprietary lease of the apartment on the fourth floor of 1125 Fifth Avenue, New York, New York, from Stephen S. Girard to Barbara Girard.

2. That the defendant corporation has the right or power to refuse to transfer, as of record, on the books of the said corporation the 497 shares of stock of defendant corporation.

3. That defendant corporation has the right or power to refuse to consent to the assignment of the proprietary lease from Stephen G. Girard to Barbara Girard of the fourth floor Apartment at 1125 Fifth Avenue, New York, New York 10028; and

4. That the defendant corporation's refusal to transfer the stock of defendant corporation from Stephen S. Girard to Barbara Girard and to consent to the assignment of the proprietary

77A

9

Order and Judgment Appealed From

lease of the apartment located on the fourth floor of 1125 Fifth Avenue, New York, New York, was authorized by and consistent with the terms of said proprietary lease; and it is further

ORDERED, ADJUDGED and DECREED that the defendant have judgment against the plaintiff for the sum of \$50. ⁰⁰/₁₀₀, costs, as taxed by the Clerk and that the defendant have execution therefor.

FILED
JUL 30 1974
NEW YORK
CLERK'S OFFICE

ENTER,

S/ [Signature]
J.S.C.

S/ [Signature]
Clerk

Plaintiff's Address:
1125 Fifth Avenue
New York, New York

~~ENTER~~

Defendant's Address:
1125 Fifth Avenue
New York, New York

Clerk

Exhibit D Annexed to Affidavit of Martin I. Shelton

Opinion of Spiegel, J.

 SPECIAL TERM : NEW YORK COUNTY
 : PART I

BARBARA GIRARD,

Plaintiff,

-against-

94TH STREET AND FIFTH AVENUE
 CORPORATION,

Defendant.

----- x
 CIVIL COURT : NEW YORK COUNTY
 ----- x

94TH STREET AND FIFTH AVENUE
 CORPORATION, 1125 Fifth Avenue,
 New York, New York 10028,

Petitioner
 (Landlord),

-against-

STEPHEN S. GIRARD
 Fourth Floor Apartment
 1125 Fifth Avenue
 New York, New York 10028,

Respondent
 (Tenant)

BARBARA GIRARD
 Fourth Floor Apartment
 1125 Fifth Avenue
 New York, New York 10028,

Respondent
 (Occupant-
 Undertenant).

----- x
 SPIEGEL, J.:

This is a motion by plaintiff in Action No. 1 for the removal of Action No. 2 from the Civil Court to this Court for the purpose of joint trial with Action No. 1. The defendant cross moves for summary judgment in Action No. 1 if consolidation is not granted and, additionally, if consolidation is granted for judgment as demanded in the petition in Action No. 2, dismissing the counterclaim therein.

Index No.
 15173/73

ACTION NO. 1

Index No.
 L&T 22096/74

ACTION NO. 2

SHORT FORM ORDER AND MEMORANDUM OPINION OF THE COURT BELOW. 14

The plaintiff in Action No. 1, pending in this Court, is the intended transferee of shares of the capital stock of the defendant, a cooperative apartment corporation, as well as the intended assignee of the proprietary lease to the cooperative apartment which was issued in connection with the stock certificate. Although plaintiff resided in the apartment with her husband, the stock and related lease were originally held by the husband. Pursuant to a separation agreement an attempt was made to transfer the stock and lease to the plaintiff-wife without first having obtained the written consent of the corporation. Subsequently, the Board of Directors refused to consent to the assignment of the lease and rejected the demand by the plaintiff to transfer the stock on its books to the plaintiff.

In Action No. 1, the plaintiff seeks a declaration that the refusals by the corporation were arbitrary, capricious and unreasonable, as well as equitable relief compelling the defendant corporation to transfer the stock on its books to the plaintiff and to consent to the assignment of the proprietary lease.

Action No. 2 is a summary proceeding in the Civil Court which was subsequently brought by the cooperative apartment corporation as Petitioner against the tenant-husband and the occupant (undertenant)-wife, as Respondents, seeking possession of the premises and eviction of the Respondents by reason of the termination of the proprietary lease allegedly occasioned by its unauthorized assignment and the failure to pay rent (maintenance).

The Court finds that there are no issues of fact in Action No. 1 presently pending in this Court. Plaintiff contends that the assignment by her husband to her of the shares in the proprietary lease was valid and thus that the corporation had no right to refuse the consent to the assignment. This contention is without merit in view of the clear terms of the proprietary lease.

Short Form Order and Memorandum Opinion of the Court Below

The lease contains the typical provisions prohibiting the assignment of the lease without the consent of the corporation and permitting the termination of the lease on notice if the tenant is in default in payment of rent for more than two months or assigns the lease or transfers the shares of the corporation allocated to the apartment without the corporation's approval. Such a provision in a proprietary lease of a cooperative apartment, which prohibits occupancy of the apartment or assignment of the lease, without the consent of the corporation is enforceable. (Penthouse Properties, Inc. v. 1158 Fifth Avenue Inc., 256 App. Div. 685; Weisner v. 791 Park Avenue Corp., 6 N.Y. 2d 425.)

Thus, it is clear that the cooperative apartment corporation had the right to refuse to consent to the transfer of the lease to plaintiff for any reason deemed satisfactory to it (except, of course, those prohibited by Civil Rights Laws). There are no valid issues raised in the plaintiff's papers that would warrant a denial of defendant's motion. Accordingly, the defendant's motion for summary judgment in Action No. 1 is granted.

Since summary relief has been granted in the action pending here, the plaintiff's motion for removal and consolidation of Action No. 2 from the Civil Court to this Court is denied as academic.

Settle order.

Dated: July 8, 1974.



J. S. C.

81A

STATE OF NEW YORK)
 : ss.:
COUNTY OF NEW YORK)

JAMES H. SCHUYLER , being duly sworn,
deposes and says: that deponent is in the employ of SHEA
GOULD CLIMENKO KRAMER & CASEY, attorneys for Defendant
herein, is over 18 years of age, is not a party to this
action, and resides at 205 West End Avenue, N.Y., N.Y. 10023
On the 18th day of March , 1975, deponent
 Notice of Motion, Statement,
served the within Affidavit and Memorandum on
Ballon, Stoll & Itzler , Esq(s) ., attorney(s)
for the Plaintiff in the within entitled action,
by depositing a true and correct copy of the same, properly
enclosed in a postpaid wrapper in the official depository
maintained and exclusively controlled by the United States
Government at 330 Madison Avenue, New York, New York 10017
that being the post office address of the attorneys for
Defendants , directed to said attorney(s) for
Plaintiff at No. 1180 Avenue of the
Americas, New York, New York 10036 , that being the address
designated by ~~them~~ (them) for that purpose.

James H. Schuyler
JAMES H. SCHUYLER

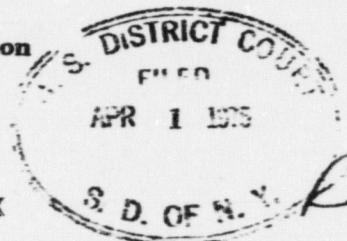
Sworn to before me this

19th day of March , 1975.

Princeton L. Hitchman
PRINCETON L. HITCHMAN
Notary Public, State of New York
No. 3111273
Qualified in New York County
Commission Expires March 30, 1977

Affidavit of Howard D. Ressler in Opposition to Motion

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



-----X
BARBARA GIRARD,

75 Civ. 646 (RJW)

Plaintiff,

-against-

94TH STREET AND FIFTH AVENUE
CORPORATION, LAWRENCE WILKINSON,
JOHN H. STOOKEY and THOMAS E. MURRAY,

AFFIDAVIT IN OPPOSITION

Defendants.
-----X

STATE OF NEW YORK)
 : ss.:
COUNTY OF NEW YORK)

HOWARD D. RESSLER, being duly sworn, deposes
and says:

1. I am associated with the firm of BALLON, STOLL & ITZLER, attorneys for the plaintiff, and submit this affidavit in opposition to plaintiff's motion for an order pursuant to Rule 12(b) of the Federal Rules of Civil Procedure dismissing this action, or in the alternative granting summary judgment to defendants pursuant to Rule 56 of the Federal Rules of Civil Procedure.

2. Defendant's motion seeks to dismiss plaintiff's complaint on the theory that the within action is barred by established principles of res judicata and collateral estoppel.

3. Significantly, defendants' memorandum of law in support of the motion takes no cognizance of certain

recent decisions rendered both by this Court and the United States Court of Appeals for the Second Circuit. Those decisions, as more fully hereinafter set forth in plaintiff's memorandum of law in opposition to the motion, categorically state that actions brought in the federal forum arising under civil rights statutes and involving issues of procedural due process are supplementary to actions brought in the state courts and, consequently, are not vulnerable to attack on a res judicata or collateral estoppel theory.

4. Although defendants' memorandum of law attempts to raise the inference that the plaintiff may have previously litigated her civil rights in the courts of the State of New York, the fact remains that prior to the commencement of this action plaintiff never raised, pleaded or submitted proof in connection with such issues. The point is graphically proved by reference to the New York Supreme Court decision involving this same plaintiff and corporate defendant. (defendants' memorandum of law in support of motion at page 7):

"Thus, it is clear that the cooperative apartment corporation had the right to refuse to consent to the transfer of the lease to plaintiff for any reason deemed satisfactory to it (except, of course, those prohibited by Civil Rights Laws). There are no valid issues raised in the plaintiff's papers that would warrant a denial of defendants' motion."
(emphasis supplied)

It is manifest, therefore, that the only written memorandum decision rendered in connection with prior litigations between the parties in the courts of the State of New York was based on the grounds that the landlord corporation had, as a matter of law, a right to refuse to consent to the lease-stock transfer which assigned ownership of the subject premises to the plaintiff. No issues with respect to plaintiff's civil rights were ever raised.

5. Of perhaps even greater significance is the fact that defendants' motion never confronts the gravamen of plaintiff's complaint, that is, that defendants' conspired to deprive this plaintiff of her civil rights and procedural due process of law in that defendants' never afforded plaintiff an opportunity to be heard, never apprised her, orally or in writing, of the reasons for their actions, and summarily determined to deprive plaintiff of her rights, title and interest in the subject premises solely for the reason that plaintiff is a woman.

6. Accordingly, as defendants' legal arguments based on principles of res judicata and collateral estoppel do not bar the bringing of plaintiff's claim, and as serious issues of fact exist as to defendants' conspiracy to deprive the plaintiff of her civil rights and procedural due process of law, your deponent respectfully submits that defendants'

85A

motion seeking an order pursuant to Rule 12(o) of the Federal Rules of Civil Procedure dismissing this action, or in the alternative granting summary judgment to defendants pursuant to Rule 56 of the Federal Rules of Civil Procedure, should in all respects be denied.

Sworn to before me this

25th day of March, 1975.

Howard D. Ressler
HOWARD D. RESSLER

Rhoda Feilman

RHODA FEILMAN
NOTARY PUBLIC - State of New York
H. 1246-1-75
Qualified in Queens County
Commission Expires March 30, 1976

Letter of Ballon, Stoll & Itzler to Hon Robert J.
Ward Dated April 30, 1975

86 A

Ballon, Stoll & Itzler
1180 Avenue of the Americas
New York, N. Y. 10036

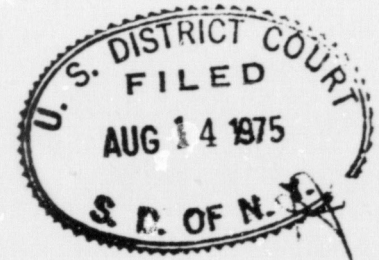
FREDERICK E. M. BALLON
ARTHUR L. STOLL
RONALD S. ITZLER
KENNETH S. KNIGIN
ALBERT M. KAUFMAN
BURTON D. STRUMPF
DAVID NADLER
STEPHEN B. SCHNEER
HERBERT BERNSTEIN

575-7900
CABLE BALFRED

DANIEL COHEN
IRVING SEROTA
BERNARD GLICKERMAN
RONALD B. GOODMAN
CLYDE M. SCHAEFER
DONALD ROSENKRANTZ
HOWARD D. RESSLER
BERNARD LOTH
PAUL MAUER
LAURA J. LANDE

April 30, 1975

Hon. Robert J. Ward
United States District Court
Southern District of New York
United States Courthouse
Foley Square
New York, New York



Re: Barbara Girard v. 94th Street and Fifth Avenue
Corporation, et al.
75 Civ. 646 (RJW)

Honorable Sir:

While mindful of the Court's decision to avoid protracted writing concerning pending matters, the undersigned is, nevertheless, constrained to respond to only one portion of defendants' supplemental memorandum. This response is made unavoidable by the citation of defendants of cases which are wholly inapposite to the conclusion for which they are presented.

Commencing on page 11 of their brief, defendants attempt to make a point of the fact that there can be no conspiracy by a single entity. Plaintiff readily concedes this self-obvious statement. However, the statement itself has no application whatsoever to the case at bar.

The plaintiff states a complete, adequate and meritorious action against a corporation and three individual defendants. The individual defendants coincidentally are directors of the defendant corporation. The individual defendants are coincidentally shareholders of the defendant corporation. The individual defendants are coincidentally tenants and occupants of apartments in the building owned by defendant corporation.

From these facts, defendants draw the misdirected conclusion that there can be no conspiracy by a single entity. The fact is that we are not dealing here with a single entity. We are concerned with a corporation and three individual persons who have entered into and performed acts under a conspiracy violating the civil rights of a woman.

Even assuming that the individual defendants herein were sued solely as members of the board of directors, defendants' argument must fail since in the one case cited by defendants where a board of directors was sued, to wit: Cohen v. Illinois Institute of Technology, 384 F. Supp. 202, 205 (N.D. Ill. 1974), the court was extremely careful to note:

"The allegations...against the individual defendants amount to nothing more than that they 'knew or should have known' of certain allegedly discriminatory acts against the plaintiff. The individual defendants were officers or directors of the corporate defendant but are not alleged to have controlled it or to have personally committed acts of discrimination,..."
(emphasis supplied)

It is particularly pertinent, with reference to the above cited case, to note that plaintiff's complaint clearly and unequivocally states allegations that the board of directors of the corporate defendant in the case at bar actively controls the corporation (complaint, par. 6), as contrasted to the court's concise statement in the Cohen case, supra.

Without attempting to belabor the point, it is clear that the other four cases cited by defendant as purporting to support this particular contention are wholly inapplicable and irrelevant. In conclusion, it is apparent that defendants attempted to argue that a conspiracy cannot exist among a group of people merely because they are of one class--- i.e., in the instant matter, all of the co-conspirators were directors, shareholders, tenants and occupants of apartments in the building owned by defendant corporation. In truth, it is obvious that defendants mutual interest would more likely make them co-conspirators than if such interest were lacking.

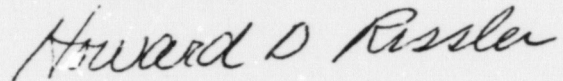
Hon. Robert J. Ward
April 30, 1975
Page -3-

88 A

Rhetorically, one might ask if 1,000 stockholders of General Motors (or even 12 of its directors) could not be charged as co-conspirators merely because they were all of one class? The answer is obviously no.

Plaintiff respectfully apologizes to the Court for burdening it with this additional response, and requests that it be made a part of the record herein.

Respectfully yours,



HOWARD D. RESSLER
For the Firm

HDR/rr

cc: Shea, Gould, Climenko,
Kramer & Casey, Esqs.
Att: Martin I. Shelton, Esq.

89 A

Opinion of Ward, J.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
BARBARA GIRARD,

Plaintiff,

-against-

94TH STREET AND FIFTH AVENUE
CORPORATION, LAWRENCE WILKINSON,
JOHN H. STOOKEY and THOMAS E.
MURRAY,

Defendants.
-----X

OPINION

75 Civ. 646
R.J.W.

#42698

A P P E A R A N C E S

BALLON, STOLL & ITZLER, ESQS.
Attorneys for Plaintiff

KENNETH S. KNIGIN, ESQ.
HOWARD D. RESSLER, ESQ.
Of Counsel

SHEA GOULD CLIMENKO KRAMER & CASEY, ESQS.
Attorneys for Defendants

MARTIN I. SHELTON, ESQ.
JAMES H. SCHUYLER, ESQ.
Of Counsel

U.S. DISTRICT COURT
JUN 30 3 02 PM '75
S.D. OF N.Y.

WARD, J.

Defendants, 94th Street and Fifth Avenue Corporation ("the corporation") and the members of its board of directors, individually, move to dismiss the complaint pursuant to Rule 12(b)(6), Fed. R. Civ. P., for failure to state a claim upon which relief can be granted, or in the alternative, for summary judgment pursuant to Rule 56, Fed. R. Civ. P., on ground of res judicata. Since matters outside the pleadings have been presented to and not excluded by the Court, the Rule 12(b)(6) motion will be treated as one for summary judgment.

In 1968, during their marriage, plaintiff's former husband purchased shares of capital stock of the corporation and became owner, for the term beginning January 15, 1968 and ending May 31, 1981, of the proprietary lease to the fourth floor of 1125 Fifth Avenue, New York. Thereafter, plaintiff and her husband entered into a separation agreement by which the latter assigned to plaintiff his right, title and interest in the capital stock and proprietary lease, and vacated the premises. The corporation was subsequently notified of the assignment. Plaintiff requested that she be recognized as the owner of the stock and as the lawful tenant of the premises. The board of directors, giving no reason, refused to consent to the assignment of

the lease and rejected the demand by plaintiff to transfer the stock on its books to her.

Plaintiff commenced an action against the corporation in the Supreme Court of the State of New York, County of New York seeking a declaratory judgment that the corporation's refusal was arbitrary, capricious and unreasonable, and a court order compelling it to transfer the stock on its books to her and to consent to the assignment of the proprietary lease. The corporation moved for summary judgment, which was granted. The Court held that by the terms of the proprietary lease the corporation had the right to refuse to consent to the transfer of the lease to plaintiff for any reason it deemed satisfactory except, as the Court noted parenthetically, for reasons prohibited by civil rights laws. The Appellate Division, First Department, affirmed the order and judgment. Plaintiff's motion for leave to appeal to the Court of Appeals was denied.

Claiming that her requested ownership transfer was rejected for reasons prohibited by the Fourteenth Amendment and the civil rights laws derived therefrom, plaintiff instituted her present action in federal court. She alleges that defendants have violated 42 U.S.C. §1983,¹ by refusing to consent to the requested assignment solely because she is female.

She also alleges under 42 U.S.C. §1985(3)² that defendants have conspired to deprive her of her procedural due process rights by refusing to provide her an opportunity to be heard at any discussion pertaining to her interests by the board of directors of the corporation, and have conspired to deprive her of substantial property rights in the subject premises solely because she is a female. In addition, she alleges violation of the New York Human Rights Law, New York Executive Law §206(5)(a)(1)³ (1972). Plaintiff seeks judgment directing that the corporation and the members of its board of directors recognize her as the lawful owner of the shares of stock and proprietary lease in the premises, and enjoining them from interfering with her peaceful possession of the premises.

Defendants contend that plaintiff has failed to state an adequate federal cause of action. Specifically, they argue that her §1983 claim must be dismissed for failure to set forth facts showing any deprivation under color of state law of any right, privilege or immunity and that her §1985(3) claim must be dismissed for failure to establish a conspiracy cognizable under the statute. Alternatively, defendants contend, if plaintiff states a sufficient claim for relief on either ground, the doctrine of res judicata precludes their assertion here since she has already litigated this controversy in state court, where she had full opportunity to assert all claims.

28 U.S.C. §1331(a) gives this Court jurisdiction to hear the federal questions raised in plaintiff's complaint since the enforcement of rights arising under the Constitution and laws of the United States is basic to the relief she seeks and the claims she alleges are neither insubstantial nor frivolous. Bell v. Hood, 327 U.S. 678, 683 (1945); Moore v. Central R. Co. of New Jersey, 185 F.2d 369, 371 (2d Cir. 1950). Jurisdiction is not defeated by the possibility that the complaint might fail to state a cause of action. That question must be decided after, and not before, the Court assumes jurisdiction. Bell v. Hood, supra at 682; Olson v. Board of Education of Union Free School District, Malverne, N.Y., 250 F. Supp. 1000, 1004 (E.D.N.Y. 1966).

To state a claim for relief under 42 U.S.C. §1983, a plaintiff must show (1) a deprivation of rights, privileges or immunities secured by the Constitution and laws of the United States, and (2) causation of such deprivation by a person acting under color of state law. "In cases under §1983, 'under color of law' has consistently been treated as the same thing as the 'state action' required under the Fourteenth Amendment." United States v. Price, 383 U.S. 787, 794 n.7 (1966) (citing cases). An action, especially under the Civil Rights Act, should not be dismissed at the pleading stage unless it appears to a certainty that plaintiff is

entitled to no relief under any set of facts which could be proved in support of her claim, Escalera v. New York City Housing Authority, 425 F.2d 853, 857 (2d Cir. 1970). Nevertheless, plaintiff's §1983 claim must be dismissed for failure to allege facts sufficient to support a finding of "state action."

Citing Shelley v. Kraemer, 334 U.S. 1 (1948), plaintiff argues that the requisite state action is present to support her §1983 claim because the courts of the State of New York have ratified and enforced the provision in the proprietary lease vesting the board of directors with near absolute authority to reject requested ownership transfers. While Shelley v. Kraemer does establish that judicial enforcement of a private discriminatory contract may constitute state action for purposes of the Fourteenth Amendment, giving rise to a claim under civil rights laws, the state judicial action involved in Shelley is clearly distinguishable from that presented here. In Shelley, discriminatory purposes of a racially restrictive covenant were secured only by reason of the state court's imprimatur. The state had thus provided "the full coercive power of government to deny to petitioners, on the grounds of race or color, the enjoyment of property rights in premises which petitioners [were] willing and financially able to acquire and which the grantors [were]

willing to sell. The difference between judicial enforcement and nonenforcement of the restrictive covenants [was] the difference between being denied rights of property available to other members of the community and being awarded full enjoyment of those rights on an equal footing." 334 U.S. at 19. However, the Court noted, "the restrictive agreements standing alone cannot be regarded as violative of any right guaranteed to petitioners by the Fourteenth Amendment . . . That Amendment erects no shield against merely private conduct, however, discriminatory or wrongful." 334 U.S. at 13.

In the instant case there is no restrictive covenant contained in the proprietary lease which expressly prohibits transfers of ownership on the basis of sex. The lease merely provides that no assignment by a lessee shall be effective against the lessor without its prior consent. The Supreme Court of the State of New York upheld the validity of this provision and acknowledged the broad power of the board of directors to refuse to consent to requested assignments for any reason deemed satisfactory to it except those prohibited by civil rights laws. Even if the board's refusal was motivated by a constitutionally impermissible purpose, any deprivation suffered by plaintiff as a consequence was completed prior to the state court proceedings. Unlike in Shelley, the action by the state court here did not effectuate a discriminatory purpose which could not have been secured but for its decision.

Finding plaintiff's reliance on Shelley v. Kraemer misplaced, this Court must determine whether plaintiff has alleged facts sufficient to establish the necessary "state action" to support her §1983 claim. Plaintiff argues no other nexus between the state and defendants' allegedly discriminatory conduct but the state court's decision.

In order to subject conduct that is formally private to the limitations of §1983 and the constitutional amendments, it must be shown (1) that the degree of state involvement with the private institution is "significant," (2) that the state's involvement is with the activity that caused the injury (the nexus requirement), and (3) that the state's involvement aids, encourages or connotes approval of the complained of activity. Moose Lodge No. 107 v. Irvis, 407 U.S. 163, 173 (1971); Barrett v. United Hospital, 376 F. Supp. 791, 797 (S.D.N.Y. 1974); see also, Jackson v. Metropolitan Edison Co., 419 U.S. 345, 351 (1975). However, our circuit recognizes a double "state action" standard: "A less onerous test for cases involving racial discrimination, and a more rigorous standard for other claims." Barrett v. United Hospital, supra at 797; Jackson v. The Statler Foundation, 496 F.2d 623, 628-29 (2d Cir. 1974) (citing cases). The Barrett court noted that the rationale behind the exception for cases involving racial discrimination may make it equally applicable to cases involving sex or age dis-

crimination. 376 F. Supp. 797 n.26.

Since plaintiff bases her §1983 claim on alleged sex discrimination, this Court will depart from the three-pronged state action test and more closely scrutinize the state court's involvement to determine whether the alleged discrimination by defendants was impregnated with governmental approval. Under this stricter standard, "indirect governmental participation in the management of an organization is persuasive evidence of the existence of 'state action' where the participation is both substantial and other than neutral." Jackson v. The Statler Foundation, 496 F.2d 623, 635 (2d Cir. 1974). Upon review of the evidence presented, it cannot be said that the action of the state court here was either "substantial" or "other than neutral." The state has merely provided a forum to determine the rights of the parties; it has no interest whatever in the outcome of the private litigation. See, Stevens v. Frick, 372 F.2d 378, 381 (2d Cir. 1967) (citing cases). The purported discrimination was not secured only by reason of the state court's decision. Cf., Shelley v. Kraemer, 334 U.S. 1 (1948). To say that an open courthouse door constitutes "state action" is to demean the judicial process. Such a conclusion would provide future litigants an opportunity to raise a §1983 claim, based on conclusory allegations of discrimination,

every time a state court construed a contractual provision, nondiscriminatory on its face, against the litigant's interests. Accordingly, plaintiff's §1983 claim is dismissed for failure to establish the requisite element of "state action."

Defendants next challenge the sufficiency of plaintiff's §1985(3) claim. In Griffin v. Breckenridge, 403 U.S. 88 (1970), the Supreme Court set the framework for an adequate complaint under §1985(3). A complaint must allege (1) a conspiracy between two or more persons for the purpose of depriving any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the law, and (2) an act by one of the conspirators in furtherance of the object of the conspiracy whereby another person was (a) injured, or (b) deprived of exercising any right or privilege of a citizen of the United States.

Existence of a conspiracy under §1985(3) presents a question of fact. Crawford v. City of Houston, Texas, 386 F. Supp. 187, 192 (S.D. Texas 1974). Viewing the complaint in a light most favorable to plaintiff, and accepting the facts alleged as true, 2A Moore's Federal Practice ¶12.08 (2d ed. 1974), the Court nevertheless finds that plaintiff has failed to allege facts sufficient to constitute a conspiracy within the meaning of §1985(3) and, therefore, her §1985(3) claim

must be dismissed.

The conduct challenged by plaintiff's §1985(3) claim is the action of the individual defendants rejecting her requested ownership transfer taken while acting in their official capacity as directors of the corporation, which she alleges constitutes a conspiracy to deprive her of her civil rights and substantial property rights solely because she is female.

The lease agreement in controversy stipulates that the directors must consent to all proposed assignments of ownership before they are effective against the lessor. While plaintiff specifically states that the board of directors controls the corporation, she never alleges that the directors acted outside their official capacity in reaching their purported discriminatory decision. Plaintiff, thus, seeks to extend §1985(3) to discriminatory business decisions participated in by members of one business entity. Cf., Baker v. Stuart Broadcasting Company, 505 F.2d 181 (8th Cir. 1974). In dealing with this precise issue, the Seventh Circuit in Dombrowski v. Dowling, 459 F.2d 190, 196 (7th Cir. 1972) stated:

. . . If the challenged conduct is essentially a single act of discrimination by a single business entity, the fact that two or more agents participated in the decision or in the act itself will normally not constitute the conspiracy contemplated by this statute.

Here, the cooperative corporation established the medium, its board of directors, through which it acted in ratifying assignments of ownership. Although the decision plaintiff challenges reflected the collective judgment of "two or more persons," the decision cannot be considered the product of a conspiracy when the board was merely carrying out the corporation's managerial policy. Following the rule stated in Nelson Radio & Supply Co. v. Motorola, 200 F.2d 911, 914 (5th Cir. 1952), cert. denied, 345 U.S. 925 (1953), when acting in an official capacity, "the acts of the agent are the acts of the corporation. . . A corporation cannot conspire with itself anymore than a private individual can." See also, Cole v. University of Hartford, 43 U.S.L.W. 2418 (D. Conn. Apr. 15, 1975). That these individuals are, coincidentally shareholders, tenants and occupants of apartments in the building owned by the defendant corporation, is irrelevant to this Court's determination of a §1985(3) conspiracy, for plaintiff has not alleged that these directors were actuated by any independent personal stake in achieving the corporation's purported illegal objective. See, Cohen v. Illinois Institute of Technology, 384 F. Supp. 202, 205 (N.D. Ill. 1974). Accordingly, plaintiff's §1985(3) claim is dismissed for failure to allege a conspiracy cognizable under the statute.

Having concluded that plaintiff's federal claims must be dismissed for failure to state a cause of action, this Court, in its discretion, will also dismiss her pendent state claim. Plaintiff will suffer minimal inconvenience by the dismissal of her state claim at a point early in the course of this litigation. Following the Supreme Court's ruling in United Mine Workers v. Gibbs, 383 U.S. 715, 726 (1966),

Needless decisions of state law should be avoided both as a matter of comity and to promote justice between the parties, by procuring for them a surer-footed reading of applicable law. Certainly, if the federal claims are dismissed before trial, even though not insubstantial in a jurisdictional sense, the state claims must be dismissed as well.

This Court's determination that plaintiff's federal claims are inadequate is expressly limited to the finding that she has failed to establish the necessary "state action" required by §1983 or an actionable conspiracy required by §1985(3). Thus, this Court does not reach the substantive issue of sex discrimination.

Since this Court has determined that plaintiff has failed to state a federal claim upon which relief may be granted, the Court need not reach the question of the

102 A

res judicata effect of the prior state court judgment.

For the foregoing reasons, defendants' motion for summary judgment is granted.

Settle order on notice.

Dated: June 30, 1975

Robert J. Ward
U. S. D. J.

NOTES

- 1 42 U.S.C. §1983 reads:

§1983. Civil action for deprivation of rights

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State, or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

- 2 42 U.S.C. §1985(3) reads:

Depriving persons of rights or privileges

(3) If two or more persons in any State or Territory conspire or go in disguise on the highway or on the premises of another, for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; or for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the laws; or if two or more persons conspire to prevent by force, intimidation, or threat, any citizen who is lawfully entitled to vote, from giving his support or advocacy in a legal manner, toward or in favor of the election of any lawfully qualified person as an elector for President or Vice President, or as a Member of Congress of the United States; or to injure any citizen in person or property on account of such support or advocacy; in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the

party so injured or deprived may have an action for the recovery of damages, occasioned by such injury or deprivation, against any one or more of the conspirators.

- 3 New York Human Rights Law, New York Executive Law §296(5)(a)(1) reads:

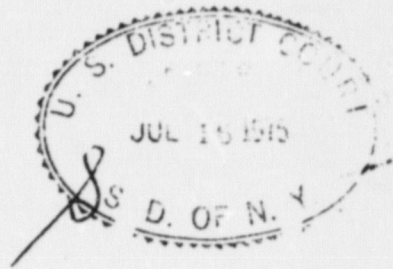
5. (a) It shall be an unlawful discriminatory practice for the owner, lessee, sub-lessee, assignee, or managing agent of, or other person having the right to sell, rent or lease a housing accommodation, constructed or to be constructed, or any agent or employee thereof:

(1) To refuse to sell, rent, lease or otherwise to deny to or withhold from any person or group of persons such a housing accommodation because of the race, creed, color, national origin or sex of such person or persons.

105 A

Order of Robert J. Ward, J.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



-----X
BARBARA GIRARD, :
 :
Plaintiff, :
 :
-against- :
 :
94TH STREET AND FIFTH AVENUE :
CORPORATION, LAWRENCE WILKINSON, :
JOHN H. STOOKEY and THOMAS E. :
MURRAY, :
 :
Defendants. :
-----X

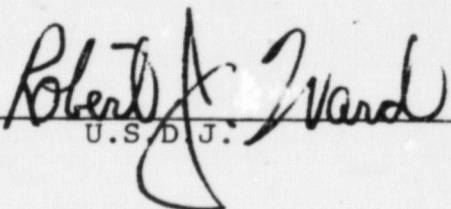
75 Civ. 646 (R.J.W.)

ORDER

This case having come on to be heard on defendants' motion to dismiss and the Court having rendered its decision dated June 30, 1975; it is

ORDERED, that defendants' motion be and it hereby is granted in all respects and that judgment be entered in favor of defendants against plaintiff.

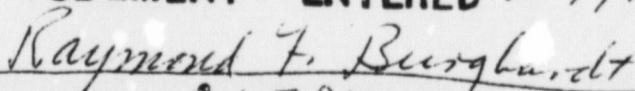
Dated: New York, New York
July 15, 1975



U.S. D. J.

mtk

JUDGMENT ENTERED - 7/17/75


CLERK

MICROFILM

R.J.W.

Order to Show Cause of Robert J. Ward, J.,
With Stay

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
BARBARA GIRARD,

Plaintiff, :

Civil Action Number
75 Civ. 646 (R.J.W.)

-against-

: ORDER TO SHOW CAUSE

94TH STREET AND FIFTH AVENUE :
CORPORATION, LAWRENCE WILKINSON, JOHN :
H. STOOKEY and THOMAS E. MURRAY, :

WITH A
STAY

Defendants. :
-----x

Upon the annexed motion and affidavit of KENNETH S.
KNIGIN, sworn to the 6th day of August, 1975, it is

ORDERED, that the defendants show cause at a motion

term of this Court, to be held in Room 706, United States
Court House, Foley Square, New York, New York, on the 6th day of
AUGUST, 1975, at 5:00 'clock in the afternoon of that day
or as soon thereafter as counsel can be heard why an order/should
not be made herein staying all defendants and their attorneys
from taking any further steps or proceedings in an action now
pending in the Civil Court of the City of New York, County of
New York, Landlord-Tenant Part, Index Number 22096/1974,
entitled: 94TH STREET AND FIFTH AVENUE CORPORATION, 1125 Fifth
Avenue, New York, New York 10028, Petitioner (Landlord) against
STEPHEN S. GIRARD, Fourth Floor Apartment, 1125 Fifth Avenue,
New York, New York 10028, Respondent (Tenant) BARBARA GIRARD,
Fourth Floor Apartment, 1125 Fifth Avenue, New York, New York
10028, Respondent (Occupant-Under-Tenant), and for such other

107A

further and different relief as to the Court may seem just and proper; and

ORDERED, that all defendants and their attorneys are hereby stayed from taking any other and further steps in the Civil Court action above described, until after the hearing and determination of the motion brought on by this Order to Show Cause; and

IT IS FURTHER ORDERED, that ^{PERSONAL} service of a copy of this Order and of the papers upon which the same is granted, on the attorneys for the defendants, on or before the 6TH day of AUGUST, 1975, ^{BY 4:40 PM} shall be sufficient service of this Order.

Dated: New York, New York
August 6TH 1975.

ISSUED AT

4:40 P.M.

Robert J. Hand
UNITED STATES DISTRICT JUDGE

Affidavit of Kenneth S. Knigin

108 A

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

BARBARA GIRARD,

Plaintiff,

-against-

94TH STREET AND FIFTH AVENUE
CORPORATION, LAWRENCE WILKINSON,
JOHN H. STOOKEY and THOMAS E.
MURRAY,

Defendants.

:
:
: Civil Action Number
75 Civ. 646 (R.J.W.)

:
:
: AFFIDAVIT

-----X

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

KENNETH S. KNIGIN, being duly sworn, deposes and
says:

1. I am a member of the firm of BALLON, STOLL &
ITZLER, ESQS., attorneys for the plaintiff Barbara Girard.

2. The above-captioned action was instituted on the
11th day of February, 1975. A copy of the complaint is annexed
hereto and made part hereof as Exhibit "A".

3. In the aforesaid action, plaintiff alleged that
various acts of the defendants in denying her tenancy in a certain
co-op apartment constituted sex discrimination prohibited by
42 U.S.C. 1983 and 42 U.S.C. 1985(3).

4. Defendants' motion for summary judgment was
granted by the Court.

5. Plaintiff has filed a Notice of Appeal to the
United States Court of Appeals for the Second Circuit, a copy of

which is annexed hereto and made part hereof as Exhibit "B"; a Pre-Argument Statement, a copy of which is annexed hereto and made part hereof as Exhibit "C"; and a Transcript Information Statement, copy of which is annexed hereto and made part hereof as Exhibit "D".

6. The very discriminatory acts of the defendants which formed the basis of the within action culminated in the corporate defendant instituting on February 1, 1974 an action in the Civil Court of the City and County of New York, Landlord-Tenant Part, Index Number 22096/1974, entitled: 94TH STREET AND FIFTH AVENUE CORPORATION, 1125 Fifth Avenue, New York, New York 10028, Petitioner (Landlord) against STEPHEN S. GIRARD, Fourth Floor Apartment, 1125 Fifth Avenue, New York, New York 10028, Respondent (Tenant) BARBARA GIRARD, Fourth Floor Apartment, 1125 Fifth Avenue, New York, New York 10028, Respondent (Occupant-Under-Tenant) wherein the Petitioner-Landlord, the corporate defendant herein, alleged that Respondent (Tenant) and Respondent (Occupant-Under-Tenant) are holdovers by virtue of a lease-stock transfer in the subject premises by the Respondent (Tenant) to the Respondent (Occupant-Under-Tenant). In fact, the aforesaid transfer was effectuated by a Separation Agreement entered into by and between the Respondents on the 3rd day of May, 1973, whereby the right, title and interest of the Respondent (Tenant) in the subject premises was assigned and transferred to the Respondent (Occupant-Under-Tenant) in lieu of the payment of any and all alimony. The aforesaid Separation Agreement was later

incorporated in a Final Judgment of Divorce on the 16th day of October, 1973.

7. As the aforesaid Landlord-Tenant action is on the trial calendar of the Civil Court of the City and County of New York for the 12th day of August, 1975, and as the matter has been marked final by that Court, no further adjournments being available to the Respondent (Occupant-Under-Tenant), it is imperative that this Court stay the defendants from further proceeding in that action in order to afford an opportunity to Barbara Girard to vindicate her rights in her appeal now pending before the United States Court of Appeals for the Second Circuit.

8. The constitutional issues raised by this plaintiff are of such magnitude, and the ramifications of the decision of this Court so great, that it is incumbent upon the Court to grant this application in order to prevent the most inequitable results which might otherwise obtain.

9. If this Court were to deny the instant application, and were the plaintiff to succeed in her present appeal to the United States Court of Appeals for the Second Circuit, the plaintiff would be relegated to a position of having to bring an action against the Petitioner (Landlord) and its Board of Directors for damages suffered by her by virtue of their illegal acts. However, no cause of action for damages, no matter how great the prayer for relief be, could restore to the Respondent (Occupant-Under-Tenant) her rightful ownership in the subject premises if said premises were sold to a third party. This

situation is manifestly untenable and inequitable, and it is respectfully submitted that this Court should not permit the Petitioner (Landlord) to strip from Respondent (Occupant-Under-Tenant) this most valuable property interest without affording her an opportunity to vindicate her rights under the United States Constitution in connection with her pending appeal. This is especially true since the Petitioner (Landlord) has received and will receive all maintenance arising by virtue of the Respondent's (Occupant-Under-Tenant) use and occupancy of the subject premises pending hearing and final determination of her appeal.

10. It is respectfully submitted that serious issues have been raised by plaintiff in her appeal now pending before the United States Court of Appeals for the Second Circuit, to wit: (1) whether the first cause of action of plaintiff's complaint, based on 42 U.S.C. §1985(3) stated a legally sufficient constitutional claim upon which relief could have been granted, thereby precluding the Court from granting summary judgment to the defendants. (2) Even if the plaintiff failed to state a prima facie claim under 42 U.S.C. §1985(3), whether the Court erred in granting summary judgment to the defendants instead of permitting plaintiff to amend the pleadings, and that her likelihood of success in this appeal is substantial.

11. This application is brought on by Order to Show Cause for the reason that the trial of the Landlord-Tenant action is imminent. No further adjournments are available therein, nor will the Landlord-Tenant Court entertain any application such as the application here submitted, although attempts to do so have

been made by your deponent.

12. This Court has the authority to grant the stay prayed for herein. The Landlord-Tenant action against which the stay is sought is neither criminal or quasi-criminal in nature. Further, Section 1983 of Title 42 by its terms specifically authorizes the granting of an injunction to stay State Court proceedings, which authority has been recognized by the Supreme Court of the United States: Lynch, et al. vs. Household Finance Corp., et al., 405 U.S. 538 (1972); Mitchum d/b/a Book Mart vs. Foster, et al., 407 U.S. 225 (1972).

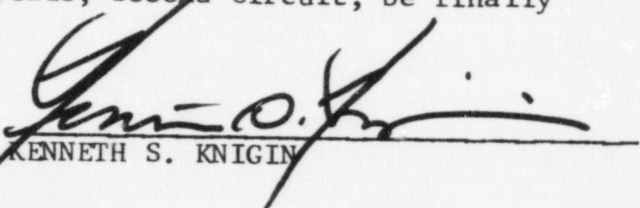
✓ 13. No prior application for the relief herein sought has been made to this Court or any other Court, except:

(1) Application for stay granted by Appellate Division of the Supreme Court of the State of New York, First Department, on _____, pending the determination of an appeal then pending in that Court, which stay has since expired.

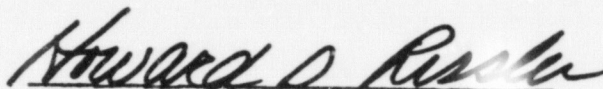
(2) Application for stay granted by Civil Court of the City of New York, County of New York, Landlord-Tenant Part on _____, pending the determination of the within action in the United States District Court for the Southern District of New York, which stay has since expired.

(3) Application for stay denied by Civil Court of the City of New York, County of New York, as hereinabove more fully set forth.

WHEREFORE, deponent prays that an Order be made staying all further proceedings in connection with the within action until such time as the appeal currently pending in the United States Circuit Court of Appeals, Second Circuit, be finally disposed of.


KENNETH S. KNIGIN

Sworn to before me this
6th day of August, 1975.


NOTARY PUBLIC

HOWARD D. RESSLER
NOTARY PUBLIC, State of New York
No. 3 451147
Qualified in New York City
Commission Expires March 30, 1976

Received 4.45.15
Aug 6, 1975 11.00 am & (encl)
Shirley H. H. H. H.
Attorney for Kefauver

114 A

Stay Order of Robert J. Ward, J.

August 6, 1975
5:00 P.M.

Motion granted as follows:

Defendants and their attorneys are hereby stayed from taking any other and further steps in the Civil Court action described herein until August 13, 1975 at 5:33 P.M. upon condition that plaintiff give security in the amount of \$25,000 for the payment of such costs and damages as may be incurred or suffered, said security to be filed with this Court by August 8, 1975 at 5:33 P.M.

It is so ordered.

Robert J. Ward
J.S.D.

1 COPY
Service of ~~1~~ copies of the
within APPENDIX is hereby
admitted this 2nd day of
SEPT 1975

Signed Her David Demark, Krone & Loser

Attorney for Defendants-Appellees